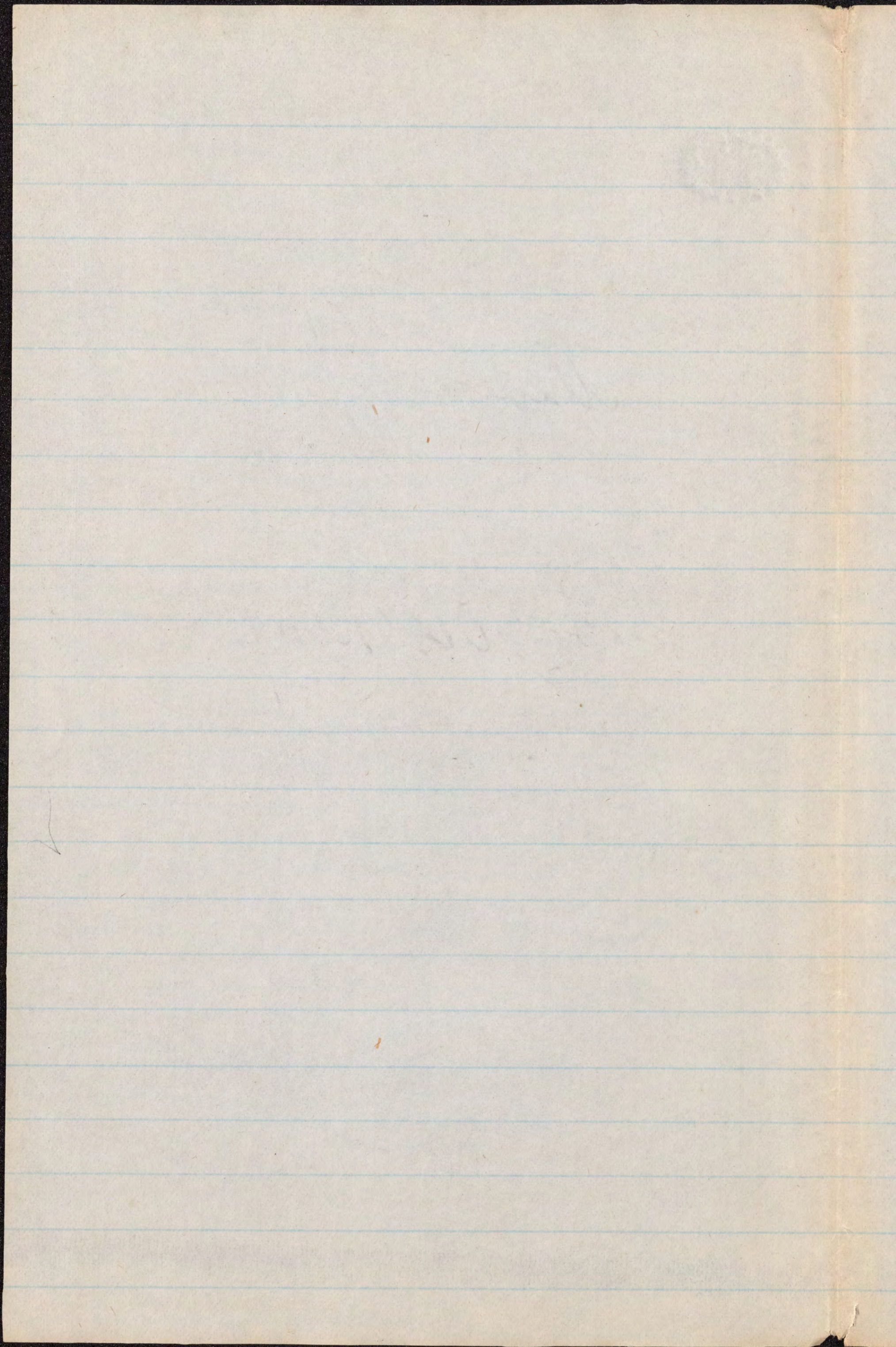


Medical Jurisprudence,

Poisoning.



Poisoning -

General Considerations.

What is a poison?

Taylor's Definition not satisfactory.

Many poisons do not need to enter the blood -

SO_3 , KO, Creasote, Corros. subl., Phosphorus, &c.

Common understanding pretty good -

I propose this definition:

A poison is a substance ~~which~~ ^{which} of its ~~own properties, or~~ ^{either} when applied ^(without violence) to the interior of the body, or introduced into the blood, ~~will of its own properties~~ ^{will of its own properties} destroy or endanger life. (H.H.)
(all needed -)

Difference between a medicine & a poison:
not fixed - medicinal or poisonous use of same thing.
Poison should (by law) be labelled as such.
(Extend) - Opium, Haschisch, Coca, ether, alcohol, arsenic, strychnine, &c.
Influence of Habit, Idiosyncrasy - Age -
Tolerance, in disease - opium, alcohol, tartar emetic.
Compound poisons - not well known yet

turnover is that
chance of having
diseases to poster-
family in a thousand
tendency to some

X

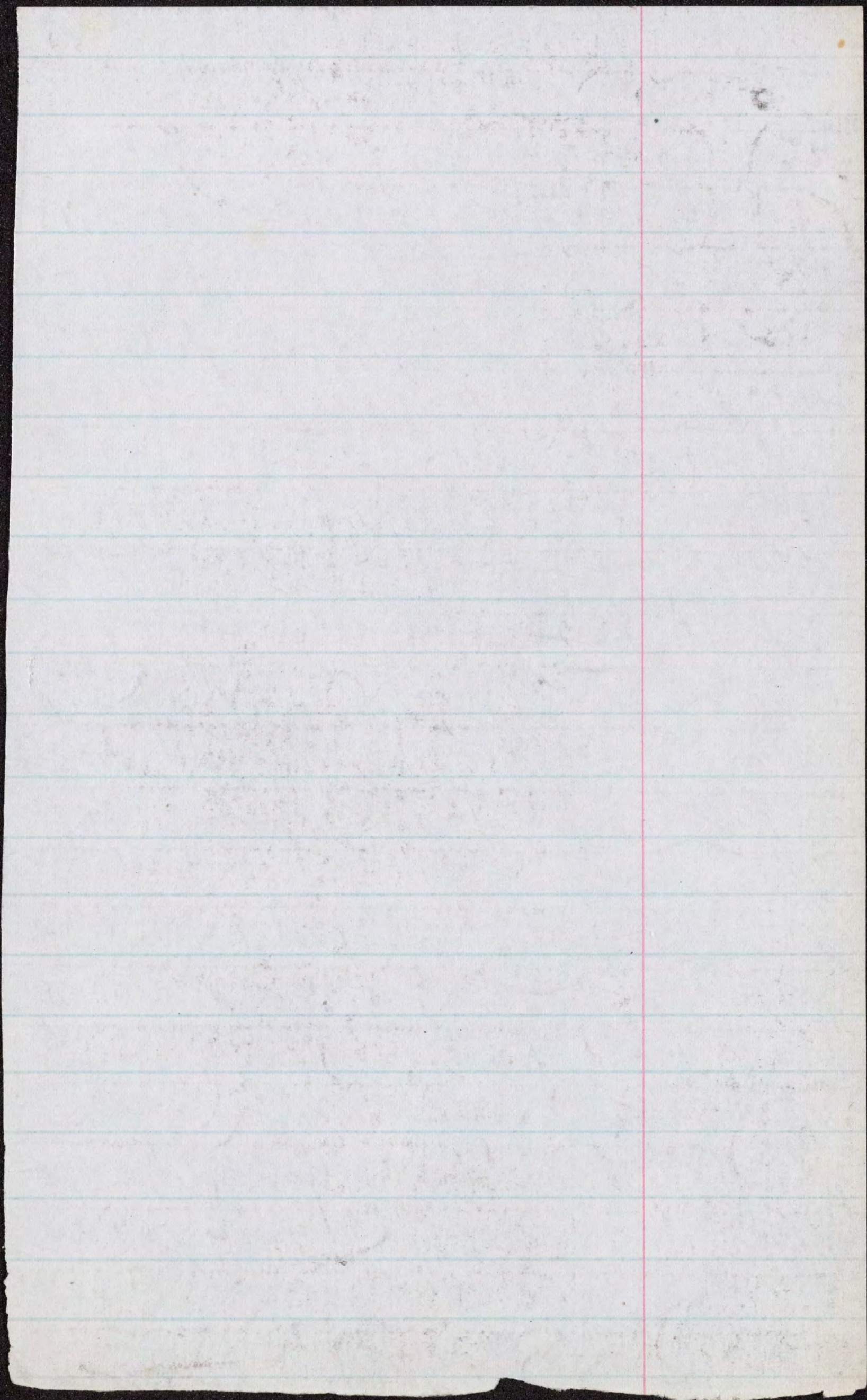
and occasional parities
spleen, Lead cholic-
losing power over
great pain reconsti-
le. In making
the phosphate
bones. In making
parities of state
In closing
thing of Sulphurated

It is to be remembered that poison
may be, & often has been, taken or
given by ^{2 cases; Smith in Delaware, - a S.W. in Norristown -} ~~accident or mistake~~. All
the attendant circ's must be noted, so as to prove this.

Mechanical irritants, - "destructive
things" - pond glass - pins needles -
sponge - liquid mercury - &c -
certainly belong in the same place with poisons - ought
~~to be~~ - ~~apart from organic poisons~~ - ~~life insurance~~
to be, though they are not always, called 'such'.

A Deadly poison; - acts fatally in
not very large dose. Somewhat indefinite;
~~acid~~ prussic acid, nuxtom
strychnia, & arsenic such -

Salt petre not, - yet poisonous.



Classification of Poisons.

(2)

They are, principally, if not including all, -

Irritants

&

Neurotics.

Irritants,

Mineral, Vegetable, Animal.

Neurotics,

Narcotics, Narcotics-irritant,

& unclassified; (poisonous, acid)

irritants, also, Hypnotics & Convulsives.

Might set apart some, as Sedative poisons;

e.g. Prussic Acid, - Aconite, Lobelia, Tobacco,

gelsemium

Moorara - Ver. viride -

^

Symptoms

(Describe characteristics of Irritant, - Convulsive,

Sedative & Hypnotic Poisoning, e.g. - from

1. Corrosive Sublimates or Oxalic Acid;
2. Stramonium or Belladonna
3. ~~Lobelia~~ or Tobacco
4. Opium or Chloral or chloroform.

Opinion is that the
time is wrong in itself;
effects.

duplication of inherited
of ill effects: because
kind, close inter-
were common with
such has been the
as in the case of the
Also persons of the
are not ^{always} idiots or
great peculiarities.

there is something
if injurious to progeny.
not breed well and
sterilize itself.

marriages of rela-
discountenanced
or reason be true.

Polymorphism

Mineral. Instant Poisons (account for about 3/4 of deaths from poison) (3)

SO_3 , NO_5 , HCl , C_4O_6 (~~I~~, A.)

KO , NaO , NH_3 , $KO.NO_5$, $BaCl$.

P. AsO_3 &c — $HgCl_2$ &c — PbA , $PbO.CO_2$, &c — $CuSO_3$, CuA , &c, SbO , $KO.T$ — Zinc & ^{some} iron salts, — $AgO.N.O_5$ —

Vegetable.

^{Claterrum}
 Aloes, Sassa, Castor oil, Colchicum, Hellebore, Ergot, Creosote, Oil of turpentine, Carbolic acid, —

Animal.

Cantharides, (Sausage poison, &c) —

Neurotic Poisons (Cerebro-Spinal).

^{Hypocyanus} Opium &c, Alcohol, Ether, Chloroform, ^{Chloral (400 grs.)} Camphor,

^{Brucia} Strychnia, ^{Scorina} ~~Stipnomum~~, ^{Solanum Nigrum} Belladonna, Digitalis, ~~Scorina~~

Aconite, Calabar Bean, ^{Edemigum} Cocculus, Indras, Picrotoxin, Lobelia, Tobacco, ^{Tymulatum} Fused oil, Dill's oil, Naphth.

~~Lobelia~~, ~~Tymulatum~~, ~~Arum~~, ~~Arum~~, ~~Arum~~

Prussic acid, $KO.Cy$, Oil of b. alm. — Nitrobenzene

Nitroglycerin — ^{Bisulphide of Carbon} Aniline & its compounds.

The lines of separation not very strong, nor constant — hardly of great practical importance.

... away, followed
... away of jaw-bone; follows
... stops them up.
... ses diarrhea &c.
... & change of place.

10

Julian

for Sixty-Nine!

205.

Evidence of Poisoning.

1st, Diagnosis during life.

1. Symptoms occur suddenly.

Slow poisoning? // Romeo & Juliet, is.

Quickest,

Hardly without symptoms

Nicotine, Prussic acid, Oxal acid, Strychnine, whose

Syberin, in a few minutes — most of all if quantity enough to be fatal. (Strach. varies, from 10 min. to 6 hours)
Arsenic in $\frac{1}{2}$ hour or less; — both irritants.

Opium, beginning in a few minutes; overwhelming in adult (if in fatal quantity) $\frac{1}{2}$ hour to hour — late but death 2 hours — much later.

Poisonous transports, said, some, delayed —

Phosphorus delayed several hours sometimes —

Breathing fumes of NO₅ delayed 3 hours sometimes, —

Remember again the tolerance of certain states of disease; also, the promoting influence of some states of body or organs, as fatty heart (chloroform) &c — Important in charges of malpraxis, accusa. of overdose —

(2) 6081 1881 1881 1881

~~Blanky 93~~

~~83~~
~~178~~
~~89~~

See

my

ship

printed

about poisons.

2. Symptoms occur during health.

Can't be always so. Sick people may be poisoned.

If so — very important — Question for natural cause; — Disease may come suddenly. Vomiting, purging, ~~stupor, convulsions~~ ^{stupor, convulsions} or great prostration the more common Sudden symptoms.

3. Symptoms come after taking food, drink, or medicine. This is especially of consequence.

But ^{poison may be introduced} — per rectum, per vaginam, aurem ^{a physician, it would enough might be poisonously a hypodermic syringe (Hamlet)} or by inhalation — (chloroform, ethyl pruss. acid, CO_2 , nitric acid —)

Inquire what was swallowed; & search for remnants — bottles, cups, papers, thrown out &c. Additions may be secretly made, to what was innocently & safely prepared. E.g., an apothecary put up a prescription — another person added poison — the patient didn't like taste & took it to apothecary, who was so sure of his compounding that he swallowed a draught of it & died — Mistakes of druggists. Symptoms following food or medicine may be coincidences. If a doubt, don't openly express it, till confirmed & proven. over

my bod. Hocking
bod on account of
of light & removal
Producers scrofulase

Summary

4. If several take same food or &c,
all have ~~the same~~ symptoms. —

my first prescription —

family poisoned by bread —

Inquire what all took of —

Symptoms of all not necessarily exactly same.

Generally most violent in those who took most;
but, not always; vomiting may save life. (e.g.)

Hardly ever any disease will suddenly
attack several all at once. Cholera (epidemic)
may possibly.

Unwholesome food ^{drugs & medicines}
^{lead in flour from millstone} ^{lead in water from copper boilers} ^{or in wine}

5. Discovery of poison in matters vomited, is
very significant — but yet not decisive as to the crime.
May have been put in, to impute poisoning. ←
If vomitus retained, into clean vessel — more clear. (See)

Although already alluded (7)
to in a previous lecture, — their impor-
tance will justify ^{my} again calling attention
to the points necessary to be noted (with
written memoranda at the time) in cases of sus-
pected poisoning. As to symptoms, —

1. The time of their occurrence
2. Their nature.
3. How long (exactly) after food or medicine.
4. The order of occurrence of the diff. symptoms.
5. Had the patient any previous illness?
6. Had the patient ever such sympt. before?
7. Was there vomiting? If so, preserve all;
or ^{at least} ^{at once} test ^{reaction}, & note color & odor &
^{quantity}, & preserve and note results.
8. If this not poss., cut out & keep cloth,
sheet or carpet, for analysis — or
wood floor, scraped or cut out; or
stone pavement, sponged with distilled water.
9. Learn what food or medicine was taken. Seal
up any suspected food obtained, & label.
10. Note at once the notes of all explanations given.
11. Was more than one person affected? — How?

Personal acquaintance
(my ~~experience~~ with poisons:

Tartar emetic, moderate amount, self & others;

Arsenic, a family; none killed;

Acetate of lead, a case in my father's office;
~~not fatal~~

Sulphuric acid, boy near Staimont, recovered;

Laudanum, fatal case at Hospital; —

& Mrs Laventree, recovered, by vomiting.

Camphor, my brother Charles, when a boy.

Toadstool — S.H. at Harrold —

Post-mortem appearances resulting from
poisoning. No characteristic external appearances.

From Instant Poisons —
inflammation (^{to} redness) of stomach, bowels, throat —

to be carefully disting. from
Natural appearance &
disease. — { Seen 2 or 3 mks after death
in some instances }

also, softening —

corrosion —

Perforation — (which may be from disease
or possibly straining —
(action of gastric juice after death))

ulceration — most often from disease.
Every case, ulcers or scars in / head & in 10!

From Neurotic poisons — as narcotics — e.g. opium —

may be cerebral congestion; usually is —

but there may be no decisive appearances.

Some poisons are
narcotics — instant or instant neurotics —
as arsenic — combining both effects

Detection of the poison in the body the com.
spec. living bodies.

chem. proof. — not always in the stomach —
organic poisons decomposable in time —
Chemistry — the microscope — & the spectroscope — used

P. 9
near
Beginning of (5th?) Lecture
1870

(2)

Least Amounts of Poisons

Capable of Destroying Life in an Adult.

Sulphuric Acid, one fluidrachm.

Nitric Acid, two fluidrachms.

Hydrochloric Acid, one fluidounce.

Oxalic Acid, one drachm.

Tartaric Acid, one ounce.

Solution of Potassa, two fluid ounces.

Solid Caustic Potash, or Soda, uncertain.

Nitrate of Silver, uncertain.

Solution of Ammonia, about a fluidounce.

Phosphorus, one eighth of a grain, to a grain.

Arsenious Oxide (acid) two grains.

Corrosive Sublimate, three grains.

Acetate of Lead, an ounce or more.

Sulphate of Copper, ^{half an ounce} ~~Acetate of Copper, ditto.~~

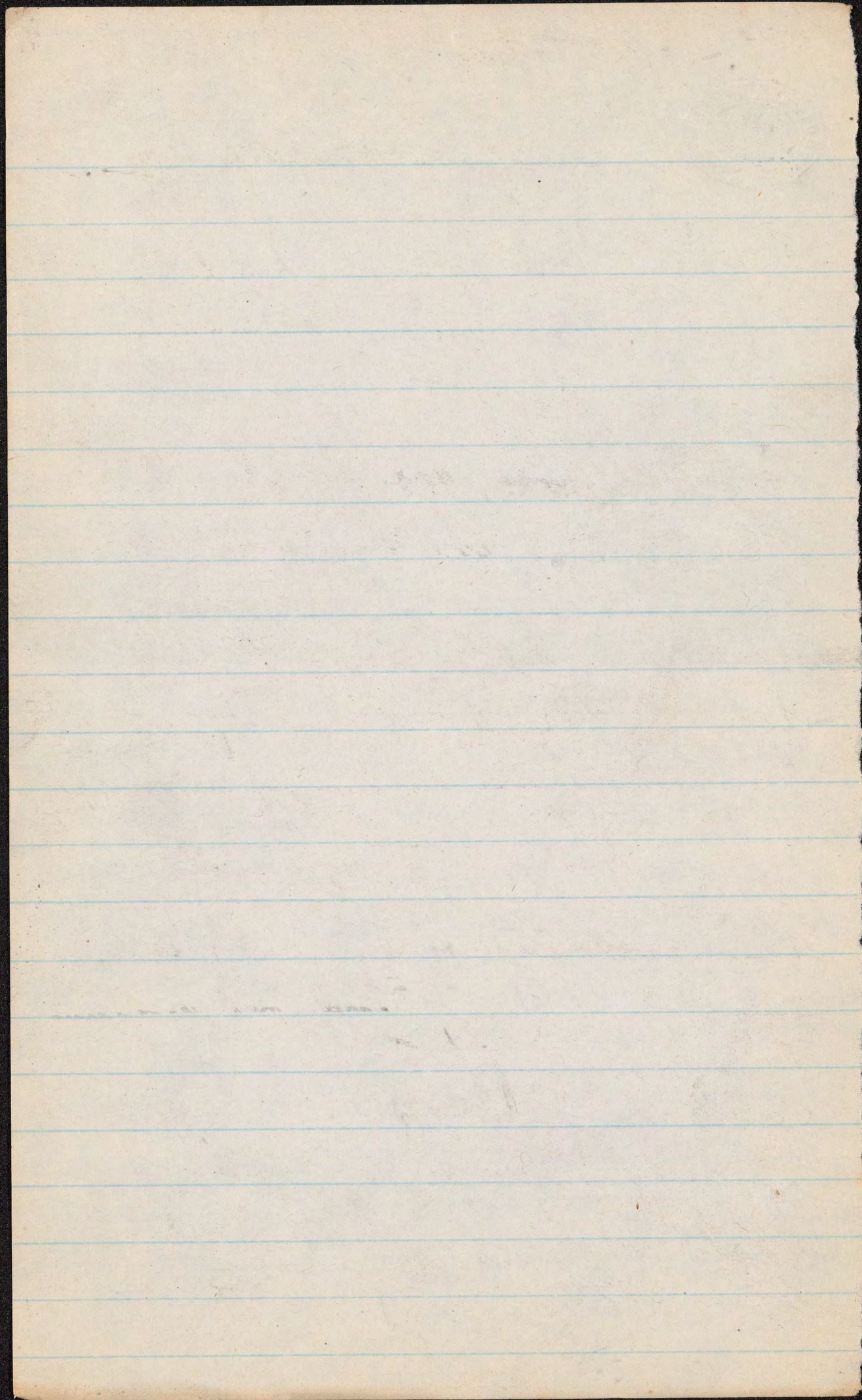
Tartar Emetic, ~~two~~ grains, to half a drachm.

Cantharides, powder, twenty four grains; Tincture, a fluid ounce.

Opium, four grains; Laudanum, two fluidrachms.

Morphia Salts, ~~one grain~~ ^{less than} ~~perhaps less.~~

Prussic Acid, one grain pure; Scheele's, twenty grains.



Cyanide of Potassium, two and a half ⁽³⁾
grains.

Tobacco, by enema, thirty grains.

Nicotina, uncertain; a very small amount.

Digitalin, one grain, probably.

Digitalis, uncertain.

Lobelia, leaves, one drachm.

Nux Vomica, alcoholic extract, three
grains.

Strychnia, half a grain to two grains.

Aconite root, less than a drachm.

Tincture of Aconite, twenty minims
to half a fluidrachm.

^{Substance}
Elesamixum, two or three drachms.

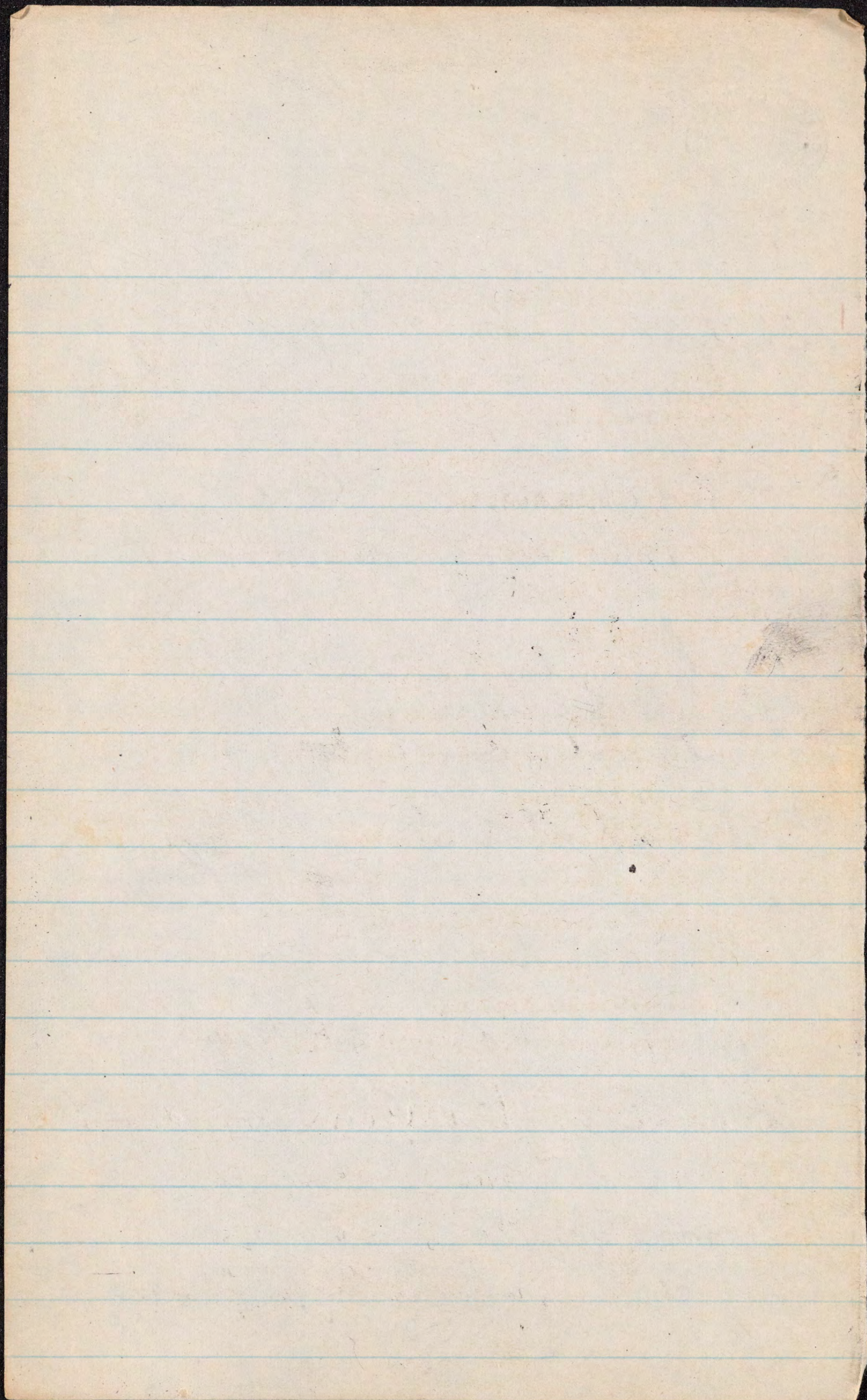
Chloride of Barium, half an ounce,

Carbonate of Barium, one drachm.

Nitrate of Potassium, one ounce.

Cream of Tartar, an ounce and a half.

Chloroform, internally, a fluidounce.



LENGTH OF TIME TO PRODUCE DEATH.

Prussic Acid or Cyanide of Potassium, from a few minutes
to 2 or 3 hrs.

Strychnia, from 10 minutes to 6 hrs.

Aconite, 3 or 4 hrs.

Arsenic, from 20 minutes to 4 hrs.

Opium or Morphia, 6 to 12 hrs.

~~Gelsemium~~ ^{3 3/4 to} 7 or 8 hrs.

~~Stramonium~~, 8 hrs.

Digitalis, over 20 hrs.

Sulphuric or Hydrochloric Acid, 16 to 24 hrs.

Nitrate of Silver, uncertain; seldom fatal.

Oxalic Acid, from a few minutes to several days.

Ammonia, a few minutes.

Corrosive Sublimate, less than half an hour.

Phosphorus, 4 hrs.

Nitric Acid, an hour and three quarters.

Fumes, 3 or 4 hours.

Chloride of Barium, 2 hrs.

Nitrate of Potassium, 2 or 3 hrs.

All irritant poisons are variable in the time elapsing be-
fore death.

INDEX OF CASES TO PRESENT DEATH.

General Index of Deaths of Persons from 1880 to 1889.

to 1 or 2 hrs.

10 minutes to 1 hr.

1 hr. to 2 hrs.

2 hrs. to 4 hrs.

4 hrs. to 6 hrs.

6 hrs. to 12 hrs.

12 hrs. to 24 hrs.

24 hrs. to 48 hrs.

48 hrs. to 72 hrs.

72 hrs. to 96 hrs.

96 hrs. to 120 hrs.

120 hrs. to 144 hrs.

144 hrs. to 168 hrs.

168 hrs. to 192 hrs.

192 hrs. to 216 hrs.

216 hrs. to 240 hrs.

240 hrs. to 264 hrs.

264 hrs. to 288 hrs.

288 hrs. to 312 hrs.

very small, nervous, delicate man; the second case was the reverse, and, besides, he received an emetic soon after taking the poison.

Case III.—Prof. Wormley reports the following case: Young married woman, pregnant, took three teaspoonfuls of Tilden's fluid extract. In two hours complained of pain in stomach, nausea, and dimness of vision. These symptoms were followed by great restlessness, ineffectual efforts to vomit, and free perspiration over the body. At the end of five hours pulse feeble, irregular, and sometimes intermittent; great prostration, irregular and slow respiration; skin dry, extremities cold, pupils expanded and insensible to light; eyes fixed, and inability to raise the eyelids. Death occurred in about seven hours and a half after taking the poison. No convulsions preceding.

Prof. Wormley thinks that these three teaspoonfuls could not have contained more than a sixth of a grain of the alkaloid.

Case IV.—Reported by Dr. Main. He took one drachm of fluid extract of gelsemium. Nearly blind; control over upper eyelids was almost entirely lost; flexor muscles of hands and arms paralyzed; extensors nearly so; sensation in hands and arms blunted, but not in proportion to loss of motion. Before muscles affected, disagreeable sensation in head; mind clear; hands suffered more than the legs.

Case V.—Reported by Dr. Freeman, of Brooklyn. Boy, æt. three years. After taking fifty minims of tincture of gelsemium (made by maceration of four ounces of the root to a pint of dilute alcohol), died in two hours. The symptoms were double vision, staggering gait, complete muscular relaxation.

dose was pretended to be forty minims of fluid extract, and the patient was a woman.

Case IX.—Reported by Dr. Boutelle, of Boston. Man, æt. twenty-four, at 1 A.M. took a teaspoonful of Tilden's fluid extract of gelsemium. In fifteen minutes he repeated the dose; his pain was soon relieved; eyes felt heavy, and in about half an hour complained of choking; soon arose, struggling for breath, pushing his fingers into his throat as if trying to tear it open. He staggered reeling from one room to the other, as though intoxicated, and shortly afterwards threw himself on the floor, and became unconscious. 4 A.M., respirations gasping, three or four per minute; pulse rapid and feeble; unconscious, could not be roused; pupils dilated, not responding to light; eye could be touched without any contraction of the lids; skin moist; extremities cold; pulse grew slower and weaker. Death in three hours and forty-five minutes after taking the poison, without any convulsions occurring at any time.

An analysis of the above cases of poisoning gives the following as the course of symptoms: Disordered double vision, ptosis, want of co-ordination in the movements, disagreeable feeling in the head, great muscular relaxation, lower jaw drooping, tongue stiff, sensation blunted, pupils dilated, respiration slow and irregular, pulse slow and feeble, surface cold and congested, unconsciousness, and death.

On comparison of its effects on man and warm-blooded animals, the analogy is complete. In man there is the same paralysis of motion, want of co-ordination, diminished sensibility, relaxation of muscles of the jaws and the rest of the body, diminished pulse and pressure, lessened respiration, decreased temperature, and dilated pupils.

A CASE OF CHOREA IN THE NEGRO.

BY W. T. SKINNER, M.D.,

Glasgow, Delaware.

MY attention having been called to the fact, by the inquiries of Dr. S. Weir Mitchell, that chorea in the negro is extremely rare, I deem this sufficient apology for reporting the following case:

May 22, 1875.—D. B., æt. 18, colored (of pure African descent), servant-girl from Philadelphia, has suffered for some time with subacute rheumatism, at the termination of which she was suddenly seized with choreic movements mostly affecting the muscles of the head and neck, characterized by a continual bobbing or shaking of the head. The legs and arms are affected only when she attempts to use them. The movements are all increased by exercise and diminished by rest, and entirely suspended when the patient lies down. The tongue can be thrust out only by some effort. The face is unaffected.

Pulse 144. Slight murmur at the apex, heard most distinctly a little external to the nipple. Menstruation regular. No spinal tenderness or other evidence of hysterical temperament.

I cannot get her family history; I only learn that she has lost several brothers and sisters, and therefore suppose it is not very favorable.

Her nutrition is bad. She is directed to make use of liberal diet, to take exercise moderately and frequently in the open air; and, in the way of medicines, cod-liver oil, syrup of iodide of zinc, and tincture of digitalis are ordered.

June 18.—The improvement has been gradual. She now has intervals of rest from the movements, but they are called into operation by any attempt at exercise, such as walking, or even standing. Pulse 80, and regular; cardiac murmur unchanged. General condition much improved. Same remedies continued, and strychnia, one-twenty-fourth gr. thrice daily, added.

July 14.—Patient still improving; same treatment continued.

chills, of the tertian type, which he contracted while working upon the Eastern Shore of Maryland, last fall. As the chill was expected the next morning, I told the patient to go home and send for me on the first symptoms of its coming. When I was called I found the patient with a shaking ague, with ashen hue of skin, feeble pulse, great irritability of the stomach, constant retching. I gave him five drops of nitrite of amyl by inhalation. In a few seconds the ashy hue of the skin disappeared, vomiting ceased, reaction was complete, with very little fever; in two hours from the time I first saw the patient he was out of bed, and by the liberal use of quinine and iron the patient had no more chills.

Case III.—Capt. H. called at my office to be treated for a whitlow involving the first and second joints of the middle finger. Dreading the operation of laying open the finger with a knife, the captain suggested the use of chloroform, which he had taken for two or three minor operations, while in the army, without any bad result. I sent for 3i of Squibb's chloroform, and, pouring two or three drachms upon his handkerchief, directed him to inhale it, at the same time directing him to elevate his hand, intending, so soon as the hand dropped, to lay open the finger. As the hand dropped, I noticed that the patient was of a deathly pallor, and had ceased breathing; opening his mouth and drawing the tongue forward with a tenaculum, I immediately applied five drops of the nitrite of amyl to the nose and mouth. To my delight, flushing of the face, with violent beating of the carotids, ensued, and the captain opened his eyes, wanted to know where he was, and consented to have his finger incised without the further use of chloroform.

TRANSLATIONS.

ON THE COMPARATIVE ANTISEPTIC EFFECT OF BENZOIC AND SALICYLIC ACIDS.—Prof. E. Salkowski, of Berlin (*Klin. Wochenschr.*, 1875, No. 27), has been

Least amount of each poison capable of (8th)
destroying life in adult -

SO₃ - ℥ij
(my case of recovery, ^{more})

No 5 - ℥ij

HCl - ℥ij

Ag. O. N. O. - ℥ij

Oxalic acid - ℥ij
~~℥ij~~

Tartar - ℥ij

Potash Soda in solution - about ℥ij, ^{solid much less}

Ammonia (vapor may kill) solution about ℥ij (?)

Phosphorus - about 1 grain (1 case, 1/8 grain)

Arsenious acid, 2 to 3 grains (4 gr. daily t. in Styria!)

Corrosive sublimate 3 grains

acetate of lead - uncertain - more than ℥ij at least

Sulph. Lac. Copper, ditto -

Tartar emetic - about 1/2 drachm (4 grs once)

Cantharides, powder 24 grains - Tincture ℥ij

Opium, solid, 4 grains - Laudanum ℥ij (Wig. & Pl. daily!)

Morphine salt 2 grains, perhaps less - ^{chlorat. uncertain.}

Prussic acid, 1 gr. anhydrous, 20 gr. Scheele's prep. acid

Cyan. Potass. 2th grains

Tobacco, even, 30 grain

Nicotine - ? very small amount

Nuxvom. 3 grs at least

Strychnia, 1/2 gr. to 2 gr

Aconite root, less than ℥ij

Antimony, 20 min. to ℥ss

Scilla, pond leaves, 10 drachm

Digitales - uncertain

Digitatin, 1 grain probably

Elsemium, 2 or 3 drachm?

re of his Constitution.
lungs and breathing
habits, taking care
avoid getting coughs
his chest from the
ercise moderate, frequent
whole body.

regard to this subject
on should not inter=
have lately started
on the grounds of
animals, as horses,
to any bad results, &
t^{such} times, intermarriage
The Ptolemys of Egypt
is sisters, and it was
patriarchs. But
tence of the bads ef=
e found in the

~~How long does it take~~ ^{different} poisons to produce death?

(8)

Prussic acid or Cyanide Potass. in a few minutes -
(one case 3 hours?)

Strychnia — 10 min., 2 hours, 6 hours.

Aconite — 3 or 4 hours

Arsenic — $\frac{1}{2}$ hour to 2 to 6 hours

Opium & its preparations — 6 to 12 hours -

Scopolamine — 7 to 8 hours -

Stramonium — 8 hours -

Digitalis — over 20 hours -

SO_3 & NO_5 — 18 to 24 hours.

Nitrate of Silver? seldom fatal (Tanner says in at least 2 cases)

Oxalic acid from a few minutes to several days.

Phosphorus from 4 hours to 8 or 12 days.

All irritants more variable, in time elapsing before death, than narcotic poisons.

(1856 National Hotel Epidemic, Wash. D. C.)

= most universal de
observable in the ch
= rages; idiocy, deaf
being very frequent in
child, who is not per
= fective, or who attai
-hood or old age,
these things it is usa
true rule.

X

Working in lead is very a
is taken) to introduce the
into the system, & pro
The same objections as
sulphur matches, on acc
In Needle-grinding the min
are apt to be taken in
produce great irritation
exposing to various imp
which are very unhealthy for
somewhat used to it in time. It
is also the objection to work

MEDICO-LEGAL REPORT

ON

THE MEDICAL TESTIMONY

OF THE

SCHOEPPE MURDER TRIAL,

PRESENTED TO THE

COLLEGE OF PHYSICIANS

OF

PHILADELPHIA,

AND

UNANIMOUSLY ADOPTED,

NOVEMBER 3, 1869.

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REPORT ON THE MEDICAL TESTIMONY OF THE SCHOEPPE MURDER TRIAL,

UNANIMOUSLY ADOPTED BY THE

College of Physicians of Philadelphia, Nov 3d, 1869.

The Committee on the Medico-legal testimony in the case of Dr. Paul Schoeppe, convicted at Carlisle, Penna., of the murder, by poison; of Miss Stennecke, respectfully submit the following report:

They do not propose to discuss the question of the guilt or innocence of Dr. Schoeppe, except so far as it may be affected by the medico-legal testimony. The moral or circumstantial aspect of the case is not only beyond their scope as medico-legal inquirers, but does not in any degree affect the medical evidence as to the material facts.

If this medical evidence can be shown to be involved in serious doubt, the accusation based upon it must necessarily fail, under all circumstances short of absolute proof, and the injustice to its victim will become sufficiently apparent. Our duty is:

First, To expose whatever fallacies we may discover in the medico-legal testimony on either side of the trial, thus acting in good faith as trustworthy experts.

Secondly, To declare our opinions, as fellows of this College, in behalf of the whole profession whose dearest rights may be in jeopardy, through the action of a Court and jury under the lead of professional witnesses, in what seems to be the mere effect of ignorance and prejudice; and which may be applied with equal power for mischief, if uncorrected, to the destruction of any member of that profession who may become involved in a case of sudden death.

However vital, therefore, the right settlement of the questions of theory and fact in the present case may be in its influence upon the individual; and however much we may sympathize with him in the sense of wrong, if not of danger, we are bound to remember alike our obligations to the community and to the profession—not to defend the one at the expense of the other, but to protect all parties from the liability to such fearful error. If such evidence as we shall presently submit to you is to be accepted as proof of murder, without exposure of its inconclusiveness, and a decided protest against the alarming ease with which a few ill-informed and careless witnesses have been allowed to brand a practitioner of medicine as a poisoner because he was subjected to their suspicion, a similar danger may await us all. Nothing but our previous reputations can protect us; and even these may be destroyed by some unfortunate coincidence of circumstances which may be wrested to our destruction. Surely the people among whom such conclusions can be reached, must pay the penalty of their suspicions in the want of confidence between patient and physician, which such horrible contingencies will inevitably foster. We are not the advocates of Dr. Schoeppe; but, for aught that appears upon this trial, the worst faults of this unfortunate man may have been a lack of professional skill, and perhaps of respect for himself and for the dignity of his calling. Yet he is consigned to the gallows because of the sudden death of a patient under his care; and that upon the ill-digested opinions of his professional neighbors; while the few who had been called to cor-

rect their mistakes, and instruct the Commonwealth and the jury in his behalf, and for the sake of truth and justice, are ridiculed and charged with pecuniary motives.

It is under this aspect of the case, as having the seeming approval of medical authority, rather than for the sake of an unjustly convicted medical practitioner, who has already been amply vindicated by numerous able defenders, that we are asked to relieve ourselves of our share of the responsibility as physicians of Pennsylvania, in the duty of aiding in the attempt to deliver all parties from the consequences of this extraordinary verdict. If there had been reasonable ground for suspicion of slow poison during professional attendance, or a trustworthy observation of symptoms of acute or active poisoning at the time of death, as shown by the evidence of skilled or unskilled witnesses on either side, we should be very differently influenced in our discussion of the medical testimony. But the radical defects of this testimony for the prosecution are too clearly evident to admit of the slightest hesitation as to their utter insufficiency. In regard to the evidence of the experts for the defence, we are obliged to say, that, under ordinary circumstances among educated and intelligent men, it could hardly have failed to secure an acquittal for want of proof. The chemical testimony on that side respecting errors of analysis, the proper mode of avoiding these, and the true evidence of poison, was all that could have been desired—and such as would naturally be expected from its source. The testimony as to pathological questions, also, was in marked contrast with that presented by the Commonwealth. Although it might have been fuller and more decided and satisfactory on some points, it nevertheless afforded ample contradiction to the assertions of the prosecution. In short, the witnesses for the defence are entitled to the thanks of the College for redeeming the profession of our State from a large share of the mortification to which the medical testimony of the prosecution has subjected us.

As stated by the Judge presiding at the trial, the "Commonwealth allege that the death of Miss Stennecke was caused by dangerous and poisonous drugs, by prussic acid or by morphia, or the two combined, administered to her by the prisoner with the intent to destroy life." In order to establish this assertion they had to show :

First, That Miss Stennecke, *although sixty-five years old*, was in good ordinary health.

Second, That Miss Stennecke was seen and found by competent witnesses to be suffering, *beyond a reasonable doubt, and for a reasonable length of time* before her death, from symptoms of poisoning by one or both of the poisons named, or of poisoning by some other poison administered by Dr. Schoeppe, and that she continued to suffer until she died.

Third, That a post mortem examination had shown all the important organs and structures of the body of Miss Stennecke to be free, *beyond a reasonable doubt*, from serious disease; unless more or less alteration of certain parts and tissues had been found to justify, beyond a doubt, the suspicion of the poisoning, and thus to corroborate any evidence afforded by the symptoms before death; or unless the examination had become impracticable through post mortem changes caused by accidental disturbances, the effect of heat, or the length of interval after death.

Fourth, That sufficient traces of one or both of the designated poisons, or of any other poison, had been discovered and displayed, *beyond a reasonable doubt*, by chemical analysis of the body of the deceased; unless the absence from the body of these poisons, or the failure to discover any poison, could be explained by the circumstances of the case, and by the insurmountable difficulties of the examination through post mortem changes and exposures.

As there are two poisons named in the Judge's allegation, others might be excluded from consideration. But, as it would be extremely difficult to distinguish a knowledge of the fact

of the poisoning from that of the nature of the poison; and utterly impossible to do so, beyond a reasonable doubt, there is a propriety in requiring the search in the symptoms, pathological appearances and chemical analyses, for every possible poison, without regard to previous suspicions.

We have already stated that the evidence relating to the attendance of Dr. Schoeppe does not come within our scope. We may call attention to the fact, however, on account of its diagnostic value, that the only medicine proved to have been administered to or taken by Miss Stennecke, was a powerful emetic; and this is shown to have operated not more than three hours previously to the apparent or first discovered onset of her attack.

The *first step* of the investigation—that in respect to health—seems to have been comparatively ignored by the prosecution, as unworthy of attention, although it is obviously a very material point. Whether or not it were necessary to prove that she was in undoubtedly good health, it was certainly important to prove that she was not in bad health; and, at all events, that she was undoubtedly not liable to sudden and serious, and probably fatal, illness, without the intervention of a poison. If there were good reason to doubt whether her previous state of health did not make her more or less liable to rapidly fatal illness or sudden death, then the burden of proof against that doubt was certainly upon the Commonwealth.

The *second step*—that is the proof of symptoms—is, in this case, as must happen in some cases, the only positive step in the trial; since it is that upon which alone the proof of the fact of poisoning can depend.

If the character of an alleged case of poisoning be truly portrayed by definitely clear description of ante mortem symptoms in the testimony of unimpeachable witnesses, whether technically skilled or not; then, unless it can be equally well shown that the ante mortem symptoms put in evidence are as likely, or at least more or less likely, to arise from bodily disease, the belief in the fact of poisoning is naturally justified; and the jury may be governed by the corroborating circumstances in estimating doubts against the prisoner.

If the post mortem or chemical examination have been defective or insufficiently presented in the medical evidence; then the whole burden of the proof necessarily rests and turns upon the pre and ante mortem history of the case as established in the trial; so that if an affirmative conclusion cannot be reached at this stage of the inquiry, the absence of corroborative evidence in the post mortem observations, leaves nothing for the charge of poisoning to stand upon.

The committee propose, therefore, to dwell at greater length on this, the ante mortem portion of the evidence, giving it in greater fulness and detail than will be needed for the third, and especially, the fourth steps enumerated. Of these latter, that is the post mortem examination and analysis, only a brief survey of the leading points need be presented in order to demonstrate the incompleteness of that testimony as corroborative evidence.

In making out their case the Commonwealth, as already intimated, take the liberty of assuming that Miss Stennecke, notwithstanding her sixty-five years of age, was in the enjoyment of good health until after nine o'clock of the morning of the day on which the final illness began. This assumption is proved to be erroneous by a letter (p. 17,) of Dr. Schoeppe, written some months previously to the decease, (and produced by the prosecution for another purpose); also by a witness for the defence, and through the cross-examination of a witness for the Commonwealth, who was related to Miss Stennecke and hence an old acquaintance. From this testimony it appears that she *had long been an ailing woman*; for months past she had been under treatment for dyspeptic symptoms; and had suffered from some weakness or other affection of the eye, on account of which she had placed herself under the care of

an oculist who was reputed to be very successful in curing blindness. She had been heard to "*complain frequently of giddiness in her head.*" She was a very hearty eater, generally taking little things with her from the table to eat between meals, in that way exposing herself to dangers against which Dr. Schoeppe's letter evidently warns her when it reminds her that the improvement which enables her to indulge her appetite may be illusory, and is probably short lived. She was met in the street, after breakfast, on the day before she died, which was the first of her illness, by a witness, to whom she complained of *feeling "very dull and bad,"* and that she was "trying to walk off" what she took to be an undigested supper. Her relative, who had known her the longest, acknowledged that *she was in the habit of complaining of ill health.* Her complaints were regarded by him as "grunting," which he understood to be "complaining without cause!"

It is unnecessary, among medical men, to say much of this pernicious idea of "grunting" in its bearing on the vague, but all the more insidiously destructive nature of the languor, indefinite pains, and discomforts of the mal-assimilation and various other disturbances which attend on the downward progress of constitutional disorder, and cause the wretchedness of the chronic invalid, whether from disease of the kidneys or of other organs and structures. Who has not seen these sufferers from unrecognized disease, whose dangerous condition has been brought to notice only when too late for remedy, and whose lives have been still further embittered by this impertinent imputation of hypochondria or imaginary pain? Is not this case one of those which teach a lesson of the danger in which a physician may be involved by failure to comprehend the incipient warnings, and the neglect to apprise responsible friends? Let us, at all events, take care in time, lest, by meeting such appeals to us for aid and comfort with indifference or ridicule instead of sympathy and good advice, we do not some day subject ourselves to the charge of ignorance and cruelty, if not of murder, by the sudden termination of a case upon our hands.

The fact of this poor woman's ill health long before her fatal illness—as well as on the day of its onset—of a character bad enough to cause her rejection in every life insurance office—was established beyond a doubt; and hence demanded the scrutinous attention of all the medical witnesses who were called upon to give their opinions as to the cause of her death.

The evidence of unprofessional witnesses shows that she was seen at breakfast, in the hotel at Carlisle, which was her residence, on the 27th of January, 1869. She was at the Carlisle Bank, at some distance from the hotel, the same morning, between nine and ten o'clock; and then seemed to be "in the same state of health she always was," so far, at least, as was "noticed" by the teller of the bank. This is the only testimony as to her state of health produced by the Commonwealth. But it is shown by the defence that, shortly after leaving the bank, she was met on the Episcopal Church square, between ten and eleven o'clock the day before she died, by a waiter who had "attended to her at the table," and had heard her "complain frequently of giddiness in her head." In answer to his question "how she was," she told him "she felt very dull and bad;" "she had been eating beefsteak the evening before, and she was walking, trying to walk it off." Between ten and eleven o'clock again she is seen with the doctor, by the chambermaid, in her room; and asks this chambermaid for a spoon, which is handed to the doctor. After the doctor was gone, and "after eleven o'clock," she thinks, the chambermaid is again called, this time to empty Miss Stennecke's bucket; being told that the doctor had given her something "to throw the heaviness off her chest." After the bucket was "emptied, she laid down." (p. 5.)

This story of the bucket ends the history of her previous state of health, which constitutes the first part of the inquiry. It must be regarded, also, as the commencement of the illness ending in her death, which occurred about thirty-four hours later.

She was missed at dinner, and was next seen by a lady boarder (Mrs. Parker, p. 4,) who visited her room at two o'clock in the afternoon, and who then found her "completely prostrated," "very languid," and "very drowsy."

Here we have a distinct commencement of the serious symptoms of disorder of her system in the prostration, languor and drowsiness—all easily accounted for by the emetic, and the previous dullness and heaviness in the head and stomach.

The chambermaid (p. 5,) sees her at three o'clock, and finds her lying in bed, but thinks that she does "not seem very ill." Her room is visited a third time by the chambermaid, between seven and eight o'clock in the evening, after an interval of between four and five hours; she finds her "seeming to be very sick and sleepy." "She got up," says the chambermaid, "undressed, and went to bed; she had a wrapper on; I helped her to undress; I helped her to get out of bed; when I wouldn't speak to her she would doze off, sitting on a chair, when I would call her to arouse her; I did not see her then until the next morning at six o'clock; I then saw her in bed; I went to her, shook her, and called her, but she never moved nor answered a word; her breathing was very hard."

8
hours
interval

Another witness, the proprietor of the hotel, testifies that he knocked at her door, which had an open transom ventilator over it, and called her, between nine and ten o'clock, but could get no answer.

Mrs. Parker, the lady boarder, saw her again, a little after six o'clock, on this second morning. "She was lying insensible, breathing rather heavily. Thought her eyes a very little bit open when she first saw her. Saw her again at noon; her eyes were closed, and there seemed to be a perspiration on her face. She was lying on her left side, in an easy position." *The room seemed to be very close*, but there was no unusual odor. "Her breathing did not amount to a snore, but made quite a noise; it was not regular; it would apparently stop for a while." There were no convulsions and no distortion of the features seen by this witness.

We have other testimony, to a similar effect, some of which shall be submitted presently; but as these two witnesses complete the only, or rather the most precise history given, of the symptoms, these being unchanged to their observation, throughout the day until her death, we stop a moment to examine them.

She was first seen by Mrs. Parker in a languid, prostrate and drowsy condition at two o'clock; but the chambermaid had found her under the influence of an emetic, evidence of which was seen and taken away, soon after eleven o'clock. This more or less prostrating emetic had been taken thus early in the day, after a bad night, as shown by her conversation with the waiter. It was taken when she had but one meal to depend upon for nourishment and renewed strength in the morning, and after a walk in the cold of mid-winter, the walk itself having been taken—partly for business, perhaps—but quite as much, according to her statement to the waiter, to relieve her of a load of something which was weighing down her head and stomach—in other words, her frame. Eleven o'clock, therefore, may be regarded as the date of the commencement of the dangerous illness which had made the progress noted by dinner time at two. No well informed physician can deny that there is, here, enough described to account fully and naturally, without the slightest strain, for the first period of an invasion of apoplexy from indigestion; and that just such symptoms might occur in a person of weakened heart, fatty and softening brain, or degenerated kidneys, or, what is just as likely if not more so, of all three together, in Miss Stenneke's case, since these conditions accompany each other.

Another witness (Mrs. Schindel, also a fellow boarder, p. 5,) saw her at the breakfast table on the 27th, and not again until the next morning, after seven o'clock. "She was then unconscious, breathing quite heavily, and so continued during the day, in the same position, breathing harder, of course. Her breathing was long and heavy, not rapid gasping. Frequent intervals of a moment or so in her breathing. Did not observe any convulsions; no distortion of the features or face. Her tongue and mouth were a little twisted on one side, the left side, she was lying on. Her tongue protruded the least bit. There was no contraction or rigidity of the hands and feet. There was no foaming at the mouth, but a little saliva escaped from it during the day. Her eyes were closed from the time I went in, before eight o'clock. I was there most of the day, and found her during the day about the same as she was in the morning."

A fourth unprofessional witness (Mr. Lochman, pp. 5, 6,) was called into her room about seven o'clock on the morning of January 28th, and found her "lying on her left side, insensible. Her respiration was slow and laborious; her muscles seemed to be very much relaxed; the mouth was partially open, some accumulation of saliva, and rather pendant, from its flaccidity, to the left" "Her eyes were closed; I made no examination of them, the lids being closed." This witness states that they looked for bottles and other articles "out of which she might have taken medicine; we found a bottle of sulphuric ether, partly filled, on a table near her bed." If the absence of medicines or phials need have increased suspicion of foul play, the presence on a table near her bed of a bottle partly filled with such a powerful narcotic as sulphuric ether, was at least sufficient to suggest a doubt as to whether that may not have been the poison administered by herself; not, of course, in intentionally poisonous doses, but imprudently and injuriously, as we have often known it to be taken.

Mrs. Parker further testifies (p. 18) that Miss Stennecke "breathed very heavily, amounting to a snore." Mrs. Parker had "seen some one under the influence of morphia, who breathed heavily, amounting to a snore; not such a snore as a person sleeping; it was rather distressing." This witness and Mrs. Schindel (p. 19) assert that "her cheeks remained quiet; there was no flapping or moving of the cheeks."

Mrs. Horn (a witness for the defence, pp. 22, 23,) testifies that she found Miss Stennecke, about seven o'clock in the morning, "in an unconscious state, lying with her mouth open, tongue drawn to one side, breathing heavily, short breaths, not very short, not natural, snores, occasionally very slight stoppage in her breathing; her nose drawn somewhat to the left side; did not examine her eyes; they were closed when I went in; they remained closed all day." This witness "noticed in the afternoon that she was in a profuse perspiration on the right side, and not on the left." She also insists that the left hand was cold and the right was natural, the left side of the face was cold and the right warm, at least during the afternoon, between three o'clock and five, which was the interval in the course of which she repeatedly observed the condition of the arms and hands and the sides of the face. Several other witnesses testify, in common with the four quoted from, to the symptoms already described, as well as to the fact of her death at six o'clock.

The puffing respiration, referred to as "flapping of the cheeks," might have been an indication of some value; but was not, as we all know, a necessary accompaniment of cerebral apoplexy, and hence its absence was significant of nothing but relaxation of the muscles of the lower jaw, and of the consequent open mouth which is described. The difference in temperature and perspiration of the two sides was more important; and so would have been a definite inequality in the muscular power remaining in the two sides

during the earlier part of the second day. This does not appear to have been tested; and, at all events, is left in doubt so far as positive observation among the witnesses is concerned.

The idea of hemiplegia, or palsy of one side; and that of uræmia, or urea blood-poisoning from Bright's disease of the kidneys, although very natural, do not seem to have improved the case for the defence; because the suspicion of each disorder failed for want of evidence sufficiently strong as to its probability, or even possibility, to impress the jury in contradiction to the strange assertions of the self-constituted experts for the Commonwealth. It is by no means certain that there was not some hemiplegia, resulting from a greater amount of disease upon one side of the brain than upon the other, but there is no positive evidence of this; and the failure of the attempt to show it, for want of proper observation before death and at the post mortem inspection, only reacted on the prisoner instead of increasing the doubt, as it ought to have done, as to the actual nature of the case.

Having thus presented all the material testimony of the unskilled witnesses who saw the most of Miss Stennecke during the last thirty-three or thirty-four hours of her life, let us once more review their account of her condition.

She is seen first at breakfast, attracting no attention; then at bank, apparently as well as usual; soon after this "trying to walk off" a load upon her stomach, and feeling "very dull and bad;" next, at eleven o'clock, after taking an emetic to get rid of "the heaviness;" and then at two o'clock, "very much prostrated, languid and drowsy;" afterwards, at three o'clock, when she does "not seem so ill, and is lying down;" lastly on that day, between seven and eight in the evening, she seems "very sick and sleepy," requiring to be undressed and put to bed, dozing off while undisturbed, but waking up when spoken to. This marks a decided, but not necessarily alarming increase, of the somnolence observed at two o'clock. It does not seem to have alarmed the chambermaid; nor does the inability to arouse her two hours later appear to have disturbed the landlord. The doctor, who left her (according to one witness) at twenty minutes past eight, could not have been much impressed with it, or he would certainly have made some demonstration of anxiety, were it only for the sake of appearances.

Ten hours elapse, during the night, without any knowledge of her condition, until six o'clock of the next morning; when she is found to be in a profound coma, from which she cannot be aroused. Unless we choose to consider the call and knock of the landlord, between nine and ten o'clock P. M., a sufficient test, it is impossible to determine at what particular hour she fell into this state of stupor. We all know the frequency of these attacks at night; and how comparatively often this uncertainty exists, where the patient has been found either already dead, or several hours nearer to the end than Miss Stennecke proved to be at six o'clock.

The fair presumption is, that the coma discovered at six in the morning had begun its course in the afternoon or evening, and had been gradually overwhelming the patient throughout the night. The premonitory drowsiness, although not essential to a case of natural coma, appears to have existed, as it often does, especially in Bright's disease, and to have escaped particular attention from all observers, including the physician so far as show of apprehension was concerned; and this we have many of us seen in cases where there had been no previous reason for apprehending more drowsiness than weakness and fatigue might readily explain.

Whatever its precise duration, this coma lasted twelve hours longer, without convulsions and without the slightest proof of any special or peculiar phenomenon except those which

31
hours;
opium
kills
in from
6 to 12
hours.

are common to all cases of cerebral apoplexy and to very many of moribund prostration. It is remarkable that the only intelligible history of the illness of Miss Stennecke, however superficial and even contradictory, is derived from unprofessional witnesses; although she was within the reach of professional observation during the last twelve hours of her life.

The sole professional witness of the phenomena of her attack was first called to see her at eleven o'clock of the second day, more than six hours before she died. What opportunities he sought to assure himself of her condition, and how he conducted his examination of the symptoms, cannot be gathered from his incoherent and meagre testimony.

It is impossible to convey a just idea of this strange medley of gossip and conjecture and of his confused impressions and unwarranted opinions, without quoting his evidence at length, as given in chief and under cross-examination, with the exception of his opinion (p. 19.) as an expert.

DR. A. J. HERMAN.—(*Affirmed.*)—I am a practicing physician in this place. I have been engaged in the practice since 1839. On the morning, about eleven o'clock, of the day she died on, I received orders to come to Burkholder's to see Miss Stennecke. I went to Burkholder's, and went up to her room; there I met Dr. Schoeppe; he told me he had a case of "half-palsy," and I think he said he wanted to know whether bleeding was called for in her case. She was lying there, inclined to her left side. I was standing at the foot of her bed at the time this talk took place. I wanted to be satisfied, her lying on her left side, knowing she was a mushy woman, whether her face was crooked or not. I then told in English what a half-palsy was, that the face would have to be lopsided to have it. A lady present said she always had a crooked face. I then made no other explanation about the "hemiplegia." I then went up to her bedside; wanted to feel her pulse. I felt both arms, and found no pulsation in either; then drew the eye-lids apart, to see if there was any difference in her eyes. I found them both alike, a contracted state of the pupils. That amounted to about all I did. The doctor told me he had applied warm applications to the feet. I told the doctor then I thought she was past bleeding, and there was no use to do any thing else, that she was past taking remedies. I did not look upon it as hemiplegia at all. I was puzzled to know what was wrong. I had never seen hemiplegia in that condition before. The singular expression was the matter that troubled me. When I opened the eyes it just put me in mind of a chicken hawk that was poisoned with a compound poison. That made me think that she was rather overdosed with medicine of the same kind. This hawk was so much relaxed with taking these drugs that the tongue would fall to either side the head was leaned to, and the contracted pupil. Her physiognomy showed about the same appearance. The drugs administered to the hawk were opium pills and prussic acid—opium pills, or laudanum mixed with bread crumbs; and gave it corrosive sublimate too. The hawk lived two or three days. The symptoms indicated no natural disease. I never saw a form of sickness like it before. I could not tell the cause of her death. It was a singular form of sickness, that I could not account for at all. Morphine is the active principle of opium. Dunglison says that prussic acid has a contractive effect upon the pupil of the eye. Dunglison on poison cases.

Cross-Examined:—The singularity of the case was, she laid there in a weak, relaxed condition, as a person feels after taking a prostrating dose of Tartar-emetic. I think I have stated all the particulars I recollect of. I saw the eyes very plainly. They were contracted in the same condition as they would be if poisoned by an overdose of opium or morphia. In many cases of death you often find the one eye dilated, the other contracted. I can't call to my memory at present. In all affections that come from the brain the eye would be dilated. In apoplexy I have invariably found the pupil dilated. I never saw a case in the human subject that I knew to be a case of prussic acid. I don't pretend to say that prussic acid has the same effect on hawks and other animals that it has on the human system. All experiments are made on inferior animals. I don't know that it is laid down in the books that experiments made on fowls are no criterion for the human system. I never saw Mitchell's work on experiments with opium on pigeons. I never saw a hawk poisoned with a simple poison. One poison is frequently used as antidote to another poison in the human system. This is laid down in all the books. Atropia is an antidote to prussic acid. A good many years ago the experiment was made on the hawk: it was be-

tween 1837 and 1842. One drop of the prussic acid, a pinch of corrosive sublimate—a couple of grains, and as much laudanum as would stay in a piece of bread was the mixture; doses of this were given at intervals of three and four hours until the hawk died. If my memory serves me right, atropia is the antidote to prussic acid. I will show the authority for this. Dr. Schoeppe, Mrs. Schindel and Mrs. Parker were in the room when I examined the eye; there was also another lady present. I don't remember any other lady; there may have been another. It was the lady I didn't know the name of who said she always had a crooked face. She spoke this out while I was at the foot of the bed. I passed no opinion. I merely expressed in English what the doctor told me. If I said it was half-palsy they must have misunderstood me as to what I explained to them the doctor told me. I couldn't say what I didn't think. They were sitting in a row back of me. She might have stood back of me, or at my side, which, I didn't notice. I did not reply to Mrs. Horn it is a stroke. I did not say, although it was so put down, that I was satisfied it was produced by narcotics; not at least in that way. All I meant was, it was not any one narcotic. I don't recollect that I said that. She was in *articulo mortis*, and there was no use to apply remedies. I did not think, nor did he, that she would live till we went out and came back again. I have used prussic acid. I would have given her combined antidotes if I had given her anything. I would have given iron, to turn it into Prussian blue. I would have used electricity to stir her up. But she was too old a subject, and too far gone to use anything. Could have used stomach pump, but it would have killed her, she was so far gone; he thought so too; we coincided. He told me he had done all that could be done. I noticed no peculiar odor.

In chief:—The eyeball had a kind of conical appearance; more elongated; that was the singular appearance of the eye. After we left the house, the doctor and I, we walked out towards my house. I told him that folks told me before I came to the house that she had too much morphia, and was dying in consequence of it. He told me he had not given her any; if she had any she must have got it somewhere else. It seemed to affect him very much when I told him that. He seemed to be kind of scared, and said if she had taken any morphia it might be found in her. I said I guess not, that I thought it would be all lost in the system before it could be found. Yes, says he, by post mortem examination there have already been found as high as three grains in the brain. He seemed to be scared, and I pitied him really, and said it was given for her benefit. These post mortem examinations, I said, would be left to physicians, and they wouldn't be over anxious to make the examination too soon, and the contents would be left lie around until they would be accidentally lost. That no person who had corns was apt to tread on other fellows' corns. That any accident that way would be overlooked, and I thought it consoled him very much, that it met with his approbation. At the time that he heard they were making a post mortem examination in Baltimore he met me in front of the Court-house; then spoke about this examination, the post mortem; asked me whether I had a work on medical jurisprudence. I told him that I had, but there were a lot of books taken from my office, and I couldn't lay my hands on them at present. I told him Shearer's office was handy; he could get one from him. We went in and got one. I then left Mr. Shearer's office, and he had the book. The doctor said, if they don't find anything in the subject what can they do?

DR. A. J. HERMAN (recalled to finish cross-examination):—I met the folks who told me, I think Mr. Burkholder one, and Mrs. Parker another, and several others, as I passed through the entry. I don't remember who the others were. I didn't tell Schoeppe she had taken morphia. I thought he knew that himself. I thought she had been taking it. If it uttered my lips that she didn't take morphia I didn't mean it. I don't believe I did say from the appearance of her eyes she had not taken morphia. If I did say it, I said it unthinkingly. I was not asked any portion of my conversation with Dr. Schoeppe. I don't think I detailed any of it in my former examination. I understood him medical jurisprudence. I didn't give anything definite. I don't think I could have said that. My feelings towards Dr. Schoeppe have not been at all of a bad kind. I have no feeling against him at all. I have said nothing to any one meaningly against him. If any one said anything against him I may have assented, but not with the intention of injuring him.

Re-in Chief:—The appearance of her eye indicated hydrocyanic acid, according to Duglison. I found the books the gentlemen asked for, and find them just as I stated.

The only available information to be extracted from this remarkable display is found in the following few words: "I felt both arms, and found no pulsation in either; then drew the eyelids apart, to see if there was any difference in her eyes. I found them both alike, a contracted state of the pupils. That amounted to about all I did."

The confession here made of the whole extent of his action in the case, whether as counsel or expert, may be safely taken as the most accurate and pointed statement in his testimony. It fully accounts for the confused and meagre nature of his recollections, as shown by the counter-evidence of others, as well as by his own self-contradictions, which he endeavors to disclaim.

The single examination of the eyes, which seems to have made so striking an impression on his sight as to have recalled to his memory the tortures to which he had subjected a chicken hawk so long ago as "between 1837 and 1842," was not sufficient to satisfy us, even as to the state of the pupils; and yet it appears to have been submitted to as conclusive evidence that the pupils were not only contracted, but contracted alike, throughout the last six hours, if not during the whole of the attack.

Admitting this fact, however uncertain; still we know from experience, as well as authority, that contracted, and equally contracted pupils, although most generally attendant on morphia or opium poisoning, are not invariably so. Dilated pupils are sometimes present, and sometimes dilatation of one pupil and contraction of the other, is the condition observed. And we equally well know that contracted pupils are sometimes met with in morbid coma, with other apoplectic symptoms, and are frequently seen in certain forms of cerebral disease which may end in fatal stupor. They are not sufficiently conclusive signs of opium poisoning to dissipate a single reasonable doubt; and, as the only additional symptom noticed, even on the one occasion, they must not be allowed to establish what is not otherwise proved by any or all of the phenomena observed—that is, either singly or as a whole.

We need not again review the history of the symptoms at the close of the medical testimony of the skilled, as well as the unskilled witnesses; but would merely call attention to the length of time during which Miss Stennecke survived. We are inclined to date the commencement of her attack at least so early as eight o'clock of the 27th of January, when she was left by the chambermaid in a drowsy condition, from which the landlord could not or did not awaken her, when he called her, before ten. Whether this be so or not, there is no question that she was in a hopeless stupor at six o'clock the next morning; and so continued gradually sinking until her decease, at six o'clock P. M. of the second day, the 28th of January.

Fully twelve hours of complete coma are thus demonstrated; and at least eight hours of previous partial coma, during which, as may fairly be presumed, no one had approached her. This would allow too much time for the smallest possible poisonous dose of prussic acid, supposing there were the slightest evidence in the appearances or other circumstances, as testified to, to justify the suspicion of this acid—which there certainly is not. The idea, suggested without knowledge or experience by Dr. Herman, (p. 19,) of the protraction of this time by the modifying influence of morphia, is a violent hypothesis, which the peculiarly depressing effects of both poisons, and the promptly fatal effect of one, will not allow us to entertain, even if the opinions given on the trial as to the signs of prussic acid poisoning were otherwise deserving of our serious notice. In short; as prussic acid is well known to kill its victim within a few minutes, or three or four hours* at the furthest, and

* One member of the committee once observed a case of prussic acid poisoning which survived four hours. The longest period on record hitherto is one hour.

After
prussic acid
dilatation
of pupil.
(Taylor).

was admitted at the trial to be generally fatal in its action in from five to twenty or thirty minutes, the prussic acid charge is out of the question, except under an imaginary and altogether unreasonable view; and as morphia or opium poisoning is equally fatal, in the very large majority of instances, in from six to twelve hours, the fact of opium poisoning is exposed to very reasonable doubt.

No one would pretend to say that morphia or other opiate might not have been given to her by some one, or taken by herself, through the mouth, skin, or rectum. Neither has any one the right to say that the history here detailed, so far as it could be by the only witnesses cognizant of facts, betokens that such poison was either given to or taken by her. There is no substantial reason furnished by the testimony on either side of the trial, for attributing the fatal coma, or other symptoms in the case, to opium, morphia, prussic acid, or to any other poison or poisons, single or combined, rather than to natural and everyday disease. There is no warrant for suspicion, notwithstanding the complete unconsciousness, the peculiar respiration, the relaxed muscles, the laterally fallen jaw, uncertain pulse and skin, and even the contracted pupils. Several of the witnesses were evidently possessed with the idea of narcotic poisoning; but they had nothing but their hearsay recollection of discussions among themselves, and their own inexperienced imaginations to sustain them in it. Nor does the only medical witness to the facts, in his theoretical and practical ignorance of the subject, prove himself much better off than his unskilled neighbors, in his opinions as to prussic acid and the compound poisoning.

The symptoms detailed are well known to be characteristic of various forms of apoplectic cerebral lesion. They may have been due to anæmia, or to ischæmia, no less than to what is called uræmia—to failure of the circulation in the brain through want of strength, or through obstruction, or through both. To embolism, or thrombosis—that is, to the plugging, with clots, of the cerebral arteries or veins, or to diseases of these arteries or veins; and especially to a fatty or atheromatous condition of the heart, or larger arteries, or of both; to impoverished blood and weakened nerve force, and to other causes, often connected with degenerated kidneys, but not necessarily always dependent upon the blood poisoning or other results of this often insidious disease. There is nothing in the case of Miss Stennecke, so far as the medical history is concerned, that cannot be fully accounted for on the supposition of asthenic or anemic cerebral apoplexy; or apoplexy, with or without softening of a portion of the brain, from failure of the arterial circulation with obstruction of the venous circulation, through gastric irritation and cardiac exhaustion—in other words, of nervous apoplexy from indigestion, in an aged and feeble person. There may have been fatty or other disease of the kidneys, accompanying and perhaps causing the general ill health and final catastrophe. There is no definite evidence either for or against these suppositions, and we can only regard the kidney disease and the disorder of the brain and vascular circulation as conditions which might have been detected, but which remain as much in doubt as the symptoms of poisoning, *for want of observation when the opportunity was afforded during life, no less than after death.*

Our opinion, therefore, at this stage of the inquiry in the case of Miss Stennecke is, that the medical evidence of poisoning, so far as the ante mortem history is concerned, amounts to nothing; that the unprofessional testimony (*which only proves a natural stupor*) is the only reliable evidence as to every fact but one; and that the testimony of the one professional witness of her illness is worthless and ought to be condemned by every member of our profession in the country.

The next step in the investigation brings before us the post mortem examination. This was made at Baltimore, on Ash Wednesday, not later than the eleventh day after inter-

ment, and the thirteenth after death. The time of year, January, must have aided more or less in preventing material decomposition; but the transportation by railroad, from Carlisle to Baltimore, over a hundred miles, with two or three changes of conveyance by the way, was likely to increase the difficulty in ascertaining even the proximate character and amount of whatever disorders of the circulation may have existed at the time of death: since the influence of position on the gravitation of the fluids in the body after death, even in cold weather, is well known to be so great as to require great care in its estimation in all instances where the body has been moved.

With this precautionary view, there was nothing to interfere with a thorough, careful, and scientific pathological examination of the whole body, and especially of all the important organs and structures; not in the search for the effects of poison only, but for all such lesions or traces of lesion as might reasonably have been looked for as among the possible causes of an unexpected death in one who was nearly seventy years of age.

Unfortunately, there is scarcely as much, in the results of the hasty and superficial examination actually made to enlighten us, as there is in the evidence of the unskilled witnesses in the first stage of our inquiry. There is, in that portion of the testimony, some positive proof of facts; of definite phenomena, which, however confused and incomplete in general character, affords, nevertheless, a sufficiently clear description of certain signs either of disease or of poisoning. In the reports of the post mortem examination no signs of either disease or poisoning are presented; and nothing of the kind is attempted except a sort of *ex post facto comparison between the external appearances found, a week after the examination, to be described in the work of Wharton and Stille as characteristic of prussic acid poisoning, and those of the body, as the examiner was able to recall them after that interval of time.* In short, there is very little to show but the neglect of an opportunity, highly interesting in itself and of vital importance to the case; a mischievous failure to discharge a duty, which no reasonable man would undertake unless amply qualified himself, and fortified with the assistance and presence of others equally well qualified.

It will be sufficient to point out some of the most striking defects of this examination, so far as we can understand them from the printed report.

In the first place, a bad beginning must have been made, if the report be right, in his cutting through the dura mater with the skull, and removing the two together. "The membranes of the brain," he tells us, "were then cut to permit its removal." "The vessels of the pia mater, which cross the brain immediately, were gorged with blood, but were not distended, were not turgid, were flaccid." Here there is a contradiction of terms, which may be due to error in the printed report. "The brain itself was not disturbed in the removal. But the fourth ventricle was torn through, by its softening before the cord was cut which attached it to the spinal column." (p. 9.)

If not misrepresented, he destroys, by cutting through the dura mater, without remark or attention, the means of ascertaining the amount of venous congestion in the sinuses; and, at all events, he acknowledges that there "was a large amount of blood in the cranium; can not say how it came." (Cross-exam., p. 10). This was just the most important question, whether in view of narcotism or apoplexy. He says that this accumulation of blood (which he afterwards informs us was all dark fluid blood, not "ante mortem," and hence "post mortem blood,") "could not have been by hemorrhage, because there was no clot." There could be no stains of blood, in his opinion, without a clot, of which he could not have failed to discover stains, at least, if no other traces; and none of these existed, because he cut the brain to pieces, and was not able to detect any coagulum in the substance or elsewhere, or any effusion of blood, either in or on the brain! This absence of

clot and of other signs of hemorrhage or hyperæmia in the substance of the brain—except in the softened portion which he does not describe—is exactly what might have been expected, and we would have looked for, especially in conjunction with engorgement of the veins. Although he finds softening of the interior of the brain, which he tears in its removal, he omits the examination of this very important portion, mistaking it for the result of decomposition; and forgets to note the condition of the exterior of the brain, which is always the first to soften under the influence of post mortem change. He pays no attention to the arteries of the brain, in which he might have found some clots, perhaps, although with very small amounts of “hæmatin,” notwithstanding its importance, in his view, as a “positive evidence of apoplexy.” The condition of the vessels of the base of the brain might have been conclusive; and yet, in his process of chopping up, these channels of vitality were lost to the examination. The softening might have been increased by the serosity in the ventricles, an evidence of lesion if sufficient for that purpose; but it could not have been produced by chemical decay, when the body was in a state of general preservation expressly stated to be good, and when no change had taken place in many parts, the post mortem decomposition of which is well known to precede that of any portion of the brain. In fact, the interval after death was entirely too short, especially in winter, to explain any decided softening, in the brain or elsewhere.

No description is given of the heart, except that it was “healthy,” the consistence, size, color and the contents of the two sides not being noted except that “the blood in the heart was fluid;” the aim being rather to discover the presence or absence of “calcification or nodes” upon the valves, and the ability or inability to “prevent the water passing through,” when “poured into the aorta from a phial.” The aorta does not appear to have been inspected, notwithstanding this trial of the valves. The only reference to the lungs informs us that “sections of them were thrown into a bucket of water and floated, showing no consolidation.” The liver and spleen were examined by their “external appearance alone.”

No examination was made of the kidneys; and none of the bladder and its contents, of the uterus or of the rectum, or of any other part or parts, with the single exception of the stomach or a portion of the small intestine, “he is not positive which.” The contents of the abdomen were “examined by inspection,” “before any incisions were made into its viscera.” Although “distended with air, and rather pale, they appeared healthy on sight.” The stomach was “removed by two ligatures, first passed around its two openings and secured.” “It was placed in a bucket brought by Prof. Aiken.” “The liver appeared healthy—not enlarged or unnaturally small.” “The spleen was examined in the same way, with the same result.” These so called examinations were simply external “inspections;” no idea of color, consistence or other characteristics being thought of. Two sections of the small intestine, one of the ileum eighteen inches in length, and the other also of the ileum nearer the colon, were tied and removed like the stomach, and put into jars for chemical analysis; nothing having been seen of the interior of the canal except in the casual look at one or the other portions, which was “laid open upon a clean plate.”

This closes the account of the post mortem inspection; of which we have presented enough to show its insufficiency to prove anything but the incompetence of the examiner and the unfairness of the examination. There was but one other professional witness present, except the analyzing chemist under whose direction the investigation was undertaken. No representative of Dr. Schoeppe, or any third party, was present at the operation, except the professional assistant who seems to have been there to identify the body as that of a relation; and no written record of appearances noted appears to have been made. The professional assistant testifies to the softening of the brain, but cannot

say what part was softened! He was looking for "hemorrhages of the spine." He coincides with his principal in asserting that the "whole brain was examined" and that he "found no pathological lesions of any kind." He professes to have made "a cursory examination of the kidneys, but not a thorough one."

The failure to make a close inspection of the kidneys on the spot, and a subsequent examination of their structure with the microscope, as might doubtless have been done and ought to have been attempted, has been justly reprehended, as an omission that was fatal to the evidence, because it leaves us in the dark as to points which might have settled the question. This objection was made by the defence, with ample force, and should have had conclusive weight, as there was no answer worthy of notice to contradict it. There was nothing more likely than that Miss Stennecke had been suffering from Bright's disease in a more or less advanced condition; and hence had been—through fatty degeneration of those organs, and, incidentally, of the heart, liver and brain, weakening all her vital functions, impoverishing her blood and enfeebling her digestion—predisposed to the sudden illness, or at least the death, of which she died. There is certainly nothing uncommon or unnatural in such a termination of her life, especially at her age. Whatever really was the cause of her decease, it might have been much more sudden without justifying any reasonable suspicion of violence or poison, *unless under the very strongest corroborative circumstances*. As already intimated, a microscopical investigation of the structure of the heart, liver and brain, as well as of the kidneys, might have been practicable, and ought to have been attempted. A careful study of the softened tissues of the brain, both as to extent and structure, and of the arteries leading into and towards them, might have thrown great light upon the immediate cause of death. All the symptoms, including the contracted pupil, might have been conclusively explained, without resort to the old-fashioned "hemorrhages," coagula, congestions and blood deposits, or even to uræmic odors or effusions, referred to by the prosecution.

We have said enough to justify our view of the extremely indefinite and inadequate character of this hastily performed inspection of Miss Stennecke's remains; and now proceed to notice very briefly the last stage of the investigation, as exhibited in the testimony of the chemical expert for the Commonwealth.

The manner in which the chemical examination was conducted, and the negative results produced, through defective analysis in the search for prussic acid, have been already widely discussed and criticised. The fatal error of this examination was so clearly and ably exposed in the learned and skilful testimony of Professors Wormley and Himes, that it is needless to dwell upon it here.

It is enough to say that, owing to the forcible exposure of the fallacy, in the employment of sulphuric acid upon the tissues of the stomach, by which traces of hydrocyanic or prussic acid might have been developed in the saliva, the jury was directed by the Judge to "lay the question of death from prussic acid aside, so far as it is affected by the testimony of Professor Aiken and his chemical analysis."

Another illustration of the serious error, which seems to have been dangerously common among the witnesses for the prosecution, was the reckless manner in which this witness hazarded the notion that, although he had been unable to detect anything but a trace of prussic acid, and that only with his sulphuric acid, the presence of this "trace" "made it perfectly certain" to his "mind, as a matter of opinion, that a much larger quantity must have been present in that stomach ten or twelve days before!" We have here a striking instance of the mania for detection, so well described by Casper, in his great work on medical jurisprudence. It is a horrible species of sensationalism, against which

Silver,
Iron,
Sulphur
tests all
important.

The symptoms were incompatible with prussic acid poisoning—
not correspondent with opium or morphia poisoning;
no morphia was found, or asserted to be found.

that great authority was taught by his experience, to warn his readers with an earnestness which this illustration of its evils will enable us to understand in full force.

After the failure in the proof of prussic acid poison, it is unnecessary to consider the remainder of the testimony, in which Professor Aiken states that he looked for all the mineral and vegetable poisons, and was unable to find them. He does not say how and by what processes he made the search. He "more particularly looked for morphia and strychnia," but did not succeed in discovering "any vegetable alkaloids or mineral poisons."

Here was a much more promising field; one in which, if any poisoning had taken place, morphia was the poison to be found; but his results were in the negative. He could discover no traces in a body only thirteen days after death, and in excellent preservation.

What remains, then, for the prosecution in the only solid medical foundation for their charge of poisoning, when no medical evidence, negative or positive, of that poisoning has been produced which is worthy of the name? None has been offered, either in the description of the symptoms before death, or in the results of the pathological examination of the body, or in those of the chemical examination of the body, after death.

We do not consider ourselves obliged to recognize the fictitious case propounded as "a hypothetical case" to several so-called medical experts. Nor are we inclined to consider the opinions professed to be given by these witnesses upon the hypothetical case. Such exhibitions are necessarily fallacious, and hence unfair and dangerous. They partake too much of an *ex parte* aspect, if not of the character of a foregone conclusion, to be worthy of a Court of Justice; above all, in a case of life and death, and where the benefit of the doubt must ever be on the side of the accused.

A very slight examination of the testimony of at least one of these special witnesses will show that he is quite as much influenced by testimony of Dr. Herman and by impressions derived from the evidence of other witnesses for the prosecution, as by the picture drawn by the constructors of the fancy sketch propounded.

In conclusion, your Committee would beg leave to say that a careful study of all the testimony for the Commonwealth in the case of Dr. Schoeppe, with a like study of the medical testimony for the defence, has satisfied us as to the sufficiency of the latter for its purpose. We are equally convinced of the incompetence of the former to prove anything whatever, except the death of Miss Stennecke after an illness of about twenty-three or four hours duration; in which illness, the only prominent and unquestionable symptom was a coma, which was much more likely to be the result of disease than the result of poison.

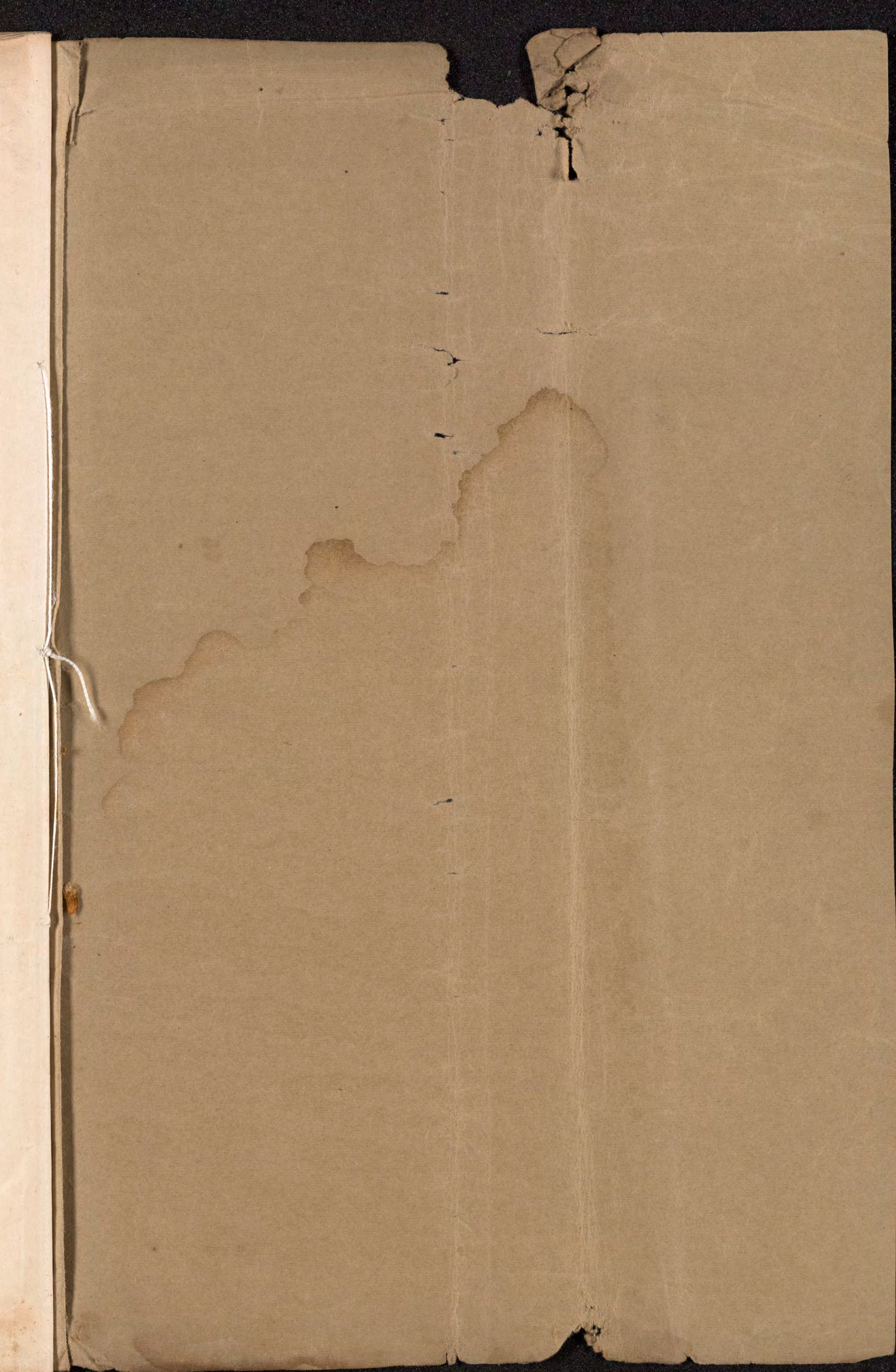
Much has already been said in regard to possibilities and probabilities of different forms of analagous disease, with which Miss Stennecke may have been affected; and we might still indulge in conjectures, and expend more time and labor in similar speculations; but they would answer no good practical purpose in their application to her case, for the plain and insurmountable reason that the premises are not sufficient to justify a positive diagnosis.

Having no substantial evidence for a scientific basis, we have absolutely nothing in the shape of genuine facts on which to rest an investigation, or through which to reach a definite conclusion. The utmost that we can affirm upon the evidence presented is, that there is much reason to believe she died a natural death from apoplexy, and very little reason to believe that she died of any kind of poison.

EDWARD HARTSHORNE, Chairman.

Committee. { ISAAC RAY,
ROBERT BRIDGES,
JOHN J. REESE,
S. LITTELL.

HALL OF THE COLLEGE OF PHYSICIANS OF PHILADA., Nov. 3d, 1869.



levied by the ordinance. Woodruff refused to pay the tax, asserting that it was repugnant to the above quoted provisions of the Constitution. The question coming finally into the Supreme Court of the State, where these provisions of the Constitution were relied on by the auctioneers as a bar to the suit, the said court decided in favor of the tax. And the question was now here for review.

Messrs. J. A. Campbell and P. Hamilton for the plaintiffs in error.

The question is: Can a State tax imports into it from other States of the Union?

The question has been answered by Chief Justice Marshall, in *Brown v. Maryland*, (12 Wheaton, 449.) The question there was the propriety of a license tax imposed by the State upon the merchant, as a pre-requisite of the right to sell the imported article. After discussing the general principles involved in the Constitutional prohibition upon the State to levy imposts or duties on imports or exports, and deciding that this tax, though indirect in form, was in fact a duty on imports, and therefore illegal, he remarks:

"It may be proper to add, that we suppose the principles laid down in this case apply equally to importations from a sister State."

It is true, the remark of the chief justice was not directly upon the point in judgment, but it was upon a matter of almost identical character; and when regard is had to the history of the times immediately preceding the establishment of the Constitution, and to the causes which led to its formation—the conflicting commercial claims of the several States, and the evils thereby produced, calling for the establishment of uniform laws, and the creation of a national legislation which should be uniform, the land throughout—the force of the remark falling from that eminent judge, and announced as the conclusion of the court, carries with it the weight of judicial authority.

That opinion has been declared, in *Almy v. California*,* to be the judgment of the court.

In that case California, for purposes of revenue, directed a stamp tax to be imposed on bills of lading for the transportation, from any point or place in that State to any point or place without the State, of gold or silver in any form. The master of a ship then lying in that State refused to pay for the stamp on a bill of lading, signed by him, for the transportation from California to New York of some gold placed on his vessel, and was indicted for this violation of the law. The question then was: Is this stamp tax, so required to be paid by State authority, an impost or duty on an export, within the meaning of the Constitutional prohibition upon the State? It was held, by a unanimous Bench, that the tax fell within the terms of the prohibition. As in this case, so in that, the transportation was between States: it was from the State of California to the State of New York. The transaction had no relation to commerce with any foreign nation. It was between two States: they alone were concerned.

The transaction was an export from one State to another State. It was, nevertheless, held to be a case of export; and, therefore, protected against any interference or regulation by mere State authority. If that be so, imports and exports being placed by the terms of the fundamental law upon a

footing of perfect equality, as to State imposition, the import in this case is equally protected with the export in that, and the State law is equally void.

Upon the authority of the two cases cited the argument is exhausted. The one is the complement of the other: the two cover the whole ground of import and export into and from a State. They establish the rule, that no matter in what form, whether by license or by stamp duty, or by any other device, a tax may be sought to be imposed by the authority of the State upon commerce not wholly internal, the attempt is illegal, and against the theory of national sovereignty and national control, which is established over the whole field of affairs external to a State; and that this rule applies whether the portion external to the State which seeks to tax is connected with, or internal to a sister State, or concerns the business of a purely foreign nation. In either event, the power to tax that commerce does not exist: it belongs alone to the general government, to which alone is intrusted the regulation of all those affairs which are not purely internal, and within the State.

And this would seem to result from the language used in the Constitution in the grant of power to regulate commerce; for the grant to Congress is universal.

The prohibition upon the States is correlative. They may not coin money, or make anything but gold and silver coin a tender; they may not make any law to impair the obligation of a contract; they may not lay imposts or duties on imports or exports; they may not lay any duty of tonnage; and may not make any agreement with themselves, or with foreign powers.

The incidental powers in relation to bankruptcy, post offices, post roads, piracies, useful inventions, and kindred matters, are all intrusted to the general government.

These grants to the one, and prohibition on the other, seem clearly to indicate where the whole power of regulation over matters purely external to a State, or common to all, was intended to be placed.

The question here is not of pilotage, of quarantine, of police regulations, or of any power which partakes of the character of either. On the part of the State, it is an attempt to tax an article brought into it from another State, for purpose of sale: it is, so far as commerce is concerned, a burden upon the article of import, because it is a subject of commerce, and is used in commerce: it is, therefore, in its operation, a regulation of commerce; and, it is, in its form and effect, so far as the State can make it, universal—having a uniform operation over the whole country; for it operates, so far as the city tax is concerned, on all articles of import; and, so far as the State is concerned, on all liquors coming from all the States.

Passing by the *License Cases** where nearly every judge gave an opinion and where it may be difficult to say what was adjudged, we come to the recent case of *Crandell v. Nevada*,† where the right of the citizen of a State to protection, in his property and privileges, as a subject of the national government, against injurious legislation by a State government, is emphatically declared, and taking the various decisions of the court together we must admit that the right of the citizen of each State to frequent the ports of the other

States, with his person and property, is a right of national origin and protection, and subject alone to national regulation; that no State regulation, for whatever purpose established, can in the smallest degree impair that right; and that all such State legislation, in the presence of this higher right, inhering in the citizen, and springing from the national organization, falls idle and powerless.

The power existing in Congress to regulate, its abstaining from legislation on the subject, is as expressive an enactment as the most positive declaration could be. It is a declaration that the commerce between the States shall be free.

Mr. P. Phillips, contra, argued that while, by the Constitution, the citizens of each State were entitled to all the privileges and immunities of citizens in the several States, yet that citizens of another State could not, in the nature of things, claim greater rights than were given by a State to its own citizens; that goods brought into one State from another were not imports, within the meaning of the Constitution;‡ that the passage quoted from the opinion of Marshall, C. J., in *Brown v. Maryland*, was but an incidental remark of that great judge, announcing an impression of his mind, what he "supposed"—on a subject not immediately before the court; that the *License Cases* did, in fact, when analyzed, decide this case as it had been decided below, and that other State courts had decided in the same way as that court;§ that in *Almy v. California*, there was no statement of the case given by the reporter, nor allusion in the argument of counsel to the question here to be considered, nor any reference to it in the decision itself. On the contrary, that many of the expressions in the opinion showed that the question in the case was considered as being one referring to foreign commerce.

Mr. Justice MILLER delivered the opinion of the court, (to be reported in 8th Wallace,) AFFIRMING THE DECREE.

At the same time with the preceding case was decided another from the same court as it and much like it in general principle; the case of

HINSON v. LOTT.

1. The principle of the preceding decision affirmed and applied to a case where, although the mode of collecting the tax on the article made in the State was different from the mode of collecting the tax on the articles brought from another State into it, yet the amount paid was in fact the same on the same article in whatever State made.

5. The effect of the act being such as just described, it was held to constitute no legislation which discriminated against the products of sister States, but merely to subject them to the same rate of taxation which similar articles paid that were manufactured within the State; and accordingly that it was not an attempt to regulate commerce, but an appropriate and legitimate exercise of the taxing power of the States.

The case was this: With the same provisions of the Constitution as are quoted in the last case in force, (supra, p.) the State of Alabama passed a statute, approved February 22d, 1866, which by its 13th section enacted:

"Before it shall be lawful for any dealer or dealers in spirituous liquors to offer any such liquors for sale within the limits of this State, such dealer or dealers introducing any such liquors into the State for sale shall first pay the tax collector of the county into which such liquors are introduced a tax of fifty cents per gallon upon each and every gallon thereof."

Two subsequent sections, the 14th and 15th,

provided the mode of enforcing the collection of the tax thus imposed.

Previous sections of the statute, it ought to be mentioned, laid a tax of fifty cents per gallon on all whiskey and all brandy from fruits manufactured in the State, and in order to collect this tax, enacted that every distiller should take out a license and to make regular returns of the amount of distilled spirits manufactured by him. On this he was to pay the fifty cents per gallon.

With this statute in force, Hinson, a merchant of Mobile, filed a bill against the tax collector for the city of Mobile, and county of Alabama, in which he set forth that he had on hand five barrels of whiskey consigned to him by one Dexter, of the State of Ohio, to be sold on account of the latter in the State of Alabama, and that he had five other barrels purchased by himself in the State of Louisiana, and that he had brandy and wine imported from abroad, (upon which he had paid the import duties laid by the United States, at the custom house at Mobile,) all of which liquors he now held and was offering for sale in the same packages in which they were imported, and not otherwise; that the tax collector was about to enforce the collection of State and county taxes on the said liquors, for which he set up the authority of the 13th, 14th and 15th sections of the already quoted act of the Alabama Legislature. Hinson insisted that this act was void as being in conflict with the Constitution of the United States, and prayed an injunction. The defendant demurred.

On final hearing in the Supreme Court of Alabama, that court gave an elaborate opinion. Referring to the clause of the Constitution which says that "Congress shall have power to regulate commerce with foreign nations and among the several States," it admitted that opinions were to be found in the reports of the Federal courts that the power was exclusive; but that the better opinions were otherwise; that while, if Congress exercised this power all conflicting legislation would give way, yet subject to the superior power in Congress, the States might legislate. It proceeded:

"There is no act of Congress with which a State tax upon liquor, introduced from other States can interfere, and therefore it is permissible for the State to impose a tax upon the sale of liquor introduced from another State. Such a tax is not only constitutional but it is obviously just and proper, for a tax to the same extent is imposed upon liquor manufactured in the State.

"It is admitted that the law under consideration is broad enough to apply to liquors imported from foreign countries, but it is void only so far as it is in collision with the acts of Congress on that subject."

Accordingly the relief prayed was granted as to all but the State tax, and relief as to that was granted as to goods imported from abroad, but the State tax of fifty cents per gallon on the whiskey of Dexter of Ohio and that purchased by plaintiff in Louisiana was held to be valid.

The case was now here for review. And was argued (like the last one though being after it, less fully) by Mr. J. A. Campbell, for the plaintiff in error, and by Mr. P. Phillips, contra: little reference being made to other sections of the statute than the 13th.

Mr. Justice MILLER delivered the opinion of the court, (to be reported in 8th Wallace.) AFFIRMING THE DECREE.

* 5 Howard, 504.

† 6 Wallace, 35; and see *Gibbons v. Ogden*, 9 Wheaton, 183; *Sinott v. Davenport*, 23 Howard.

* Bouvier's Law Dictionary, Title, "Importation."
† *State v. Pinckney*, 10 South Carolina, 474; *Cumming v. Savannah*, R. M. Charlton, 26.

* 24 Howard, 169.

ESTATE OF CHARLES B. WAINWRIGHT. Letters Testamentary upon the above Estate having been granted to the subscribers, all persons indebted to the said estate will make payment, and those having claims will make known the same to

H. H. WAINWRIGHT,
C. A. WAINWRIGHT, Exec'rs.
1304 North Broad Street.
P. O. Box 2853, Phila.

dec 17-6t*

ESTATE OF FRANCIS AND SARAH J. CASSEDY, deceased. The undersigned, Administrator, desires all parties having claims, and those indebted to said estate, to present or make payment of claims to

ALBERT CASSEDY, Adm'r,
No. 1008 S. Third Street,
Philadelphia.

dec 10-6t*

ESTATE OF JOHN H. CAVENDER, dec'd. Letters Testamentary having been granted to the subscriber upon the Estate of JOHN H. CAVENDER, deceased, all persons indebted to the same will make payment, and those having claims present them to

THOMAS C. PARRISH,
No. 341 Walnut Street,
Or to his Attorney, JOSEPH PARRISH,
nov 26-6t No. 323 Walnut Street.

ESTATE OF GEORGE L. PLITT, dec'd. Letters Testamentary upon the above Estate having been granted to the undersigned, all persons indebted to the said Estate are requested to make payment, and those having claims to present the same without delay, to

SUSAN PLITT, Executrix,
No. 335 North Thirty-Second Street.
Or to her Attorney, M. HAMPTON TODD,
nov 19-6t* No. 704 Walnut St.

ESTATE OF JOSEPH E. RINEAR, dec'd. Letters of Administration on the Estate of JOSEPH E. RINEAR, deceased, having been granted to the undersigned, all persons indebted to the said Estate are requested to make payment, and those having claims against the same to make them known without delay, to

THOMAS F. SCATTERGOOD,
Administrator,
nov 12-6t* No. 2023 Poplar St.

LETTERS TESTAMENTARY having been granted to the subscriber upon the Estate of ELLEN BRENTON, deceased, all persons indebted to the same will make payment, and those having claims present them to

F. CARROLL BREWSTER,
dec 17-6t 16 N. Seventh Street.

LETTERS TESTAMENTARY having been granted to the subscriber upon the Estate of JOHN M. FREED, deceased, all persons indebted to the same will make payment, and those having claims present them to

WILLIAM FREED,
3904 Germantown Av.
And, JOSEPH BOUCHER,
dec 17-6t* 3825 Germantown Av.

LETTERS OF ADMINISTRATION having been granted to the subscriber upon the Estate of JOHN L. NEILL, Jr., deceased all persons indebted to the same will make payment, and those having claims present them to

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dec 10-6t* No. 914 Pine Street.

LETTERS OF ADMINISTRATION having been granted to the subscriber upon the Estate of JAMES TETLOW, deceased, all persons indebted to the same will make payment, and those having claims present them to

E. MITCHELL CORNELL,
No. 1421 N. Seventh St.
Or to his Att'y, JOSEPH A. BONHAM,
dec 10-6t 117 S. Seventh St.

LETTERS OF ADMINISTRATION de bonis non cum testamento annexo, having been granted to the subscriber upon the Estate of JOHN SHINDLER, deceased, all persons indebted to the same will make payment, and those having claims present them to

JOSEPH A. BONHAM,
dec 10-6t 117 S. Seventh St.

LETTERS OF ADMINISTRATION having been granted to the subscriber upon the Estate of MARY SHINDLER, deceased, all persons indebted to the same will make payment, and those having claims present them to

JOSEPH A. BONHAM,
dec 10-6t 117 S. Seventh St.

LETTERS TESTAMENTARY having been granted to the subscriber upon the Estate of WILLIAM F. LEECH, deceased, all persons indebted to the same will make payment, and those having claims present them to

MARY S. LEECH,
H. H. HOUSTON,
And H. S. LEECH,
dec 3-6t 1123 Chestnut Street.

LETTERS OF ADMINISTRATION having been granted to the subscriber upon the Estate of WILLIAM C. H. BROWN, dec'd, all persons indebted to the same will make payment, and those having claims present them to

WILLIAM McGEORGE, Jr.,
nov 26-6t* 32 S. Third Street.

LETTERS OF ADMINISTRATION cum testamento annexo having been granted to the subscriber upon the Estate of GEORGE H. BROWN, deceased, all persons indebted to the same will make payment, and those having claims present them to

WILLIAM McGEORGE, Jr.,
nov 26-6t* 32 S. Third Street.

LETTERS OF ADMINISTRATION having been granted to the subscriber upon the Estate of DOROTHY ASHMAN, deceased, all persons indebted to the same will make payment, and those having claims present them to

PETER ASHMAN,
nov 26-6t* No. 3221 Bridge Street.

LETTERS OF ADMINISTRATION de bonis non cum testamento annexo, having been granted to the subscriber upon the Estate of ANNA E. WILSON, deceased, all persons indebted to the same will make payment, and those having claims present them to

JAMES C. WILSON,
105 S. Fifth Street.
Or to his Attorney, T. A. GUMMEY,
nov 19-6t* 711 Walnut Street.

LETTERS TESTAMENTARY having been granted to the subscriber upon the Estate of FREDERICK KLETT, deceased, all persons indebted to the same will make payment, and those having claims present them to

JOSEPH TRIMBLE,
147 S. Front St.
Or to his Att'y, B. F. FOLSOM,
nov 12-6t* 426 Walnut St.

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Register's Official Notice.

REGISTER'S NOTICE.—To all Legatees, Creditors, and other persons interested:

Notice is hereby given that the following named persons did, on the dates affixed to their names, file the accounts of their Administration to the estates of those persons deceased, and Guardians' and Trustees' accounts, whose names are undermentioned, in the office of the Register for the Probate of Wills and granting Letters of Administration, in and for the City and County of Philadelphia; and that the same will be presented to the Orphans' Court of said City and County for confirmation and allowance, on the third FRIDAY in December next, at 10 o'clock in the morning, at the County Court House in said city.

1869.
Oct. 29, Owen Evans, Charles Evans, Samuel Evans and Joel Evans, Executors of HANNAH R. EVANS, deceased.

" 30, Theodore Albett, Adm'r of SARAH E. SNYDER, deceased.

" 30, Eli K. Price and Jos. B. Townsend, Executors of EDWARD SHIPPEN BURD, deceased.

" 30, Henry Simon, John V. Shisler, Geo. A. Shisler, Isaac M. Shisler, and John Volmer, Ex'r's of GEORGE SHISLER, deceased.

Nov. 2, Edward Harkhome, Ex'r of DANIEL ROUNDTREE, deceased.

" 2, John D. Bleight, Administ'r d. b. n. of ELIZABETH BURROUGH, dec'd.

" 3, Elizabeth Quirk, Administratrix of TIMOTHY QUIRK, deceased.

" 4, Edward Murray and John A. Clark, Ex'r's of WILLIAM GRAY, dec'd.

" 4, Thomas Brown, Administrator of DEBORAH HOWELL, deceased.

" 4, Benjamin F. Makinson, Administ'r of EDWARD MAKINSON, deceased.

" 5, William H. and James M. Lamon, Ex'r's of GEORGE LAMON, dec'd.

" 5, John McGowen, Administrator of JOHN BUSH, deceased.

" 5, M. E. Fassitt, Executrix of JAMES W. FASSITT, deceased.

" 6, Stella M. Strawn and Joseph Strawn, Adm's of BENJAMIN F. STRAWN, deceased.

" 8, Abram L. Hart, Administrator of ALLYN BACON, deceased.

" 9, William Little and Thomas Worsley, Ex'r's of HANNAH NEILD, dec'd.

" 12, James H. Blight and Henry McCrea, Ex'r's of CHARLES BLIGHT, dec'd.

" 12, Eliza Kleisz and William Kleisz, Ex'r's of HENRY KLEISZ, Sr., dec'd.

" 12, Absalom Wilson, Administrator of MARGARET LIGHTCAP, dec'd.

" 12, Catharine Hobzmuller, Administ'x of WILLIAM HOBZMULLER, dec'd.

" 13, Augusta C. Robinett, Administ'x of ALMY S. HALE, deceased.

" 13, Bernhard Schaperkotter and Henry B. Rolling, Executors of FRANCIS TIEDSKEN, deceased.

" 13, James Springer, Administrator of GEORGE H. SPRINGER, deceased.

" 16, Samuel A. J. Salter, Ex'r of WILLIAM B. JONES, deceased.

" 17, Daniel M. Fox, Executor of ANN C. AYL, deceased.

" 17, Charles G. Bockius and George W. Bockius, Ex'r's of JACOB BOCKIUS, deceased.

" 17, Charles Meier, Guardian of MEINRAD MEIER, deceased.

" 17, George Wiley, M. D., Administrator of MEINRAD MEIER, deceased.

" 19, John B. Austin, Trustee under the will of JAMES S. SMITH, Jr., dec'd.

" 20, Elisha H. Hunt, Executor of HENRY A. ADAMS, deceased.

" 20, William Calverley, Acting Exec'r of JAMES PATTERSON, deceased.

" 20, Lewis D. Vankirk, Ex'r of JOSEPH T. VANKIRK, deceased.

" 20, Louis B. M. Dolby, Administrator of LOUIS B. MYERS, deceased.

" 20, John S. McMullin, Executor of WILHELMINA GIBSON, deceased.

" 22, John C. Channon, Ex'r of HIRAM QUIG, deceased.

" 23, George H. Roberts, Executor and Trustee of SAMUEL H. CARTER, deceased.

" 23, Rudolph Wittig, Executor of FREDERICK RASICH, deceased.

" 23, Mary S. Drinker, Executrix of HANNAH DRINKER, deceased.

Nov. 23, Mary A. Kosentz, Executrix of CATHARINE SMITH, deceased.

" 24, William Ernst, Exec'r of THOMAS O. WEBB, deceased.

" 24, Thomas Brown and James Irwin, Ex'r's of NATHAN BROWN, dec'd.

" 24, Rachel A. Childs, Administratrix of STEPHEN D. CHILDS, deceased.

" 24, John H. Bringham, Trustee of SAMUEL TEISTER, deceased.

" 24, Richard Vose, Administrator of WILLIAM BULLOCK, deceased.

" 24, Charles H. Siddall, Administrator of JACOB ZEPP, deceased.

" 24, George Tatham, Adm'r of RICHARD C. HOLMES, deceased.

" 24, George S. Powell and Randolph Sailer, Ex'r's and Trustees of ABRAHAM POWELL, deceased.

" 25, George Schober and Charles J. Sutter, Ex'r's of FREDERICK SCHOBER, deceased.

" 25, Mary L. G. Bennett and William H. Bennett, Administ'rs of EDWARD A. BENNETT, deceased.

" 25, Charles M. Lukens, Administrator of ALEXANDER H. PORTERFIELD, deceased.

" 25, John Purllz, Administ'r of WILLIAM STRIEN, deceased.

" 25, Louisa H. Moran, Administratrix of ANN WAGNER, deceased.

" 25, William G. Walker, Trustee of JANE WALLACE, deceased.

" 25, P. Braslen, Executor of PATRICK DEVIR, deceased.

" 25, John Wilkins, Executor of ISAAC WILKINS, deceased.

" 25, George L. Schively, Ex'r of MARIA SCHIVELY, deceased.

" 25, William P. Lytle, Administrator of MARY R. LYTLE, deceased.

" 25, William P. Lytle, Administrator of JAMES M. LYTLE, deceased.

" 25, Hugh Tait, Executor of ANDREW KNOX, deceased.

WILLIAM A. LEECH,
nov 26-4t* Register.

Supreme Court of the U. S.

WOODRUFF v. PARHAM.

1. The term "import," as used in that clause of the Constitution which says that "no State shall levy any imposts or duties on imports or exports," does not refer to articles imported from one State into another, but only to articles imported from foreign countries into the United States.

2. Hence a tax imposed by a State on all sales made in it, whether they be made by a citizen of it or a citizen of some other State, and whether the goods sold are the produce of that State enacting the law or of some other State, is valid, provided it do not, in fact, discriminate adversely to the products of other States, or otherwise involve a principle which tends to actual commercial non-intercourse, and in some other way infringes some other article of that Constitution.

Error to the Supreme Court of Alabama. The case being this:

The Constitution thus ordains:

"Congress shall have power to regulate commerce with foreign nations and among the several States."
"No State shall levy any imposts or duties on imports or exports."

With these declarations of the Constitution in force, the city of Mobile, Alabama, in accordance with a provision in its charter, authorized the collection of a tax for municipal purposes on real and personal estate, sales at auction, and sales of merchandise, capital employed in business and income within the city. This ordinance being on the city statute book, Woodruff and others, auctioneers, received, in the course of their business for themselves, or as consignees and agents for others, large amounts of goods and merchandise, the product of States other than Alabama, and sold the same in Mobile to purchasers in the original and unbroken packages. Thereupon, the tax collector for the city, demanded the tax

lous care be exercised by the experimenter. Now, to apply the above principle to the case under examination; it was clearly proved, at the trial, that *there was not a single symptom before death that resembled the well known symptoms of prussic acid poisoning*. Of course, such chemical testimony should not for a moment be considered admissible. Indeed such was the view taken both by the prosecution, who, subsequently abandoned the idea of "poisoning by prussic acid," and also by the judge, who, in his charge to the jury, directed them to disregard it.

But *thirdly*, let us notice the *post-mortem* appearances, on which the Commonwealth lays so much stress. It was clearly shown by the defence, and this too has since been corroborated by scores of professional opinions of the highest authority, that this *post-mortem* examination was most unskillfully conducted, lacking that scrupulous precision which such medico-legal investigations demand.

We may here adduce another principle in legal medicine, viz., that in order to determine the *cause of death* by means of a *post-mortem* examination, this investigation, to be of any legal value, must be thorough and exhaustive; *no part of the body should be passed over*. We need only cite the well known case, mentioned in the books, of a girl whose death was supposed to have been caused by a severe beating received from her father, but whose stomach subsequently disclosed to the examiner a quantity of arsenic, which she had swallowed for the purpose of suicide. Now in the *post-mortem* examination of the body of Miss Stennecke, several of the viscera were passed over entirely, and among the most prominent of these we may mention the kidneys; whilst the *brain*, the most important organ for the prosecution, (in order to sustain its *new* theory of a compound poison consisting of morphia and prussic acid,) was declared by the examiners to exhibit evidences of *local softening and turgescence of its vessels*, signs which point almost with the finger of demonstration to antecedent disease, probably *apoplexy*. Moreover, the symptoms exhibited by the deceased before her death could, in the opinion of all the medical experts, (except two or three who testified for the prosecution,) be much more rationally ascribed to one of the forms of apoplexy than to narcotic poisoning; witness her complaining of heaviness of the head, and load on the chest, and the partial drawing of the nose, mouth and tongue to one side, and the difference in the temperature of the two sides of the body.

It may be proper here to advert to this novel theory—in our opinion a very *far-fetched* one—of the prosecution, that if death had not been caused by prussic acid alone, it had certainly been produced by a *combination of prussic acid and morphia*; and to substantiate this allegation, the whole strength of the prosecution seems to have been directed. But on what is this hitherto unheard-of theory based? Confessedly on nobody's experience as to what might be the signs (both *ante* and *post-mortem*) of such a combination of poisons. The only witness who testified to this point, even remotely, was Dr. Herman, who, with an extraordinary faculty for the adjustment of cause and consequence, details a singular experiment which he had made some thirty years before, on a chicken-hawk, by feeding the bird on a mixture composed of "a drop of prussic acid, a pinch of corrosive sublimate—two grains—and as much laudanum as would stay in a piece of bread." Doses of this strange medley were given "every three or four hours until the hawk died," which occurred in about two days. Now, to confine ourselves exclusively to all the science that can be gleaned from this remote experiment, what does it amount to? Birds are confessedly bad subjects for experimentation with a view to deduce physiological facts in reference to the human subject. Thus, it has been shown by Dr. Mitchell, of this city, that it is almost impossible to narcotize pigeons even with the largest doses of opium; consequently, such deductions as have been arrived at by the Commonwealth from the experiment of Dr. Herman, are unsound and illogical.

But we should not omit to mention another circumstance just here, namely,

that a strong *hypothetical* case was proposed to the witnesses by the prosecution; and it was to *this* they testified, rather than to the real facts of the case. The counsel for the defence strongly objected to this course, at the time. Nor should it be forgotten that although *morphia* was carefully sought for in the stomach by Prof. Aiken, he could not discover even "faint traces" of this poison. Moreover, when Dr. S. was summoned to the bedside of the deceased on the morning of her death, he *immediately requested a consultation* to aid him in the difficult case. If he had administered a narcotic poison would he have been likely to bring in a professional witness to his guilt, one who would be led by the symptoms to suspect foul play?

It would naturally be supposed that, in view of the total failure on the part of the prosecution to prove the *fact* of poison, the prisoner would have been at once acquitted, unless the circumstantial evidence was of such unmistakable character as to warrant a conviction, despite the failure to detect any poison. It is certainly true that the failure to discover poison after death is no proof that the death was not caused by poison, *unless there was an absence of the symptoms known to be produced by the alleged poison*. Now, we have shown that there was an entire absence of the symptoms usual to prussic acid poisoning; and although some of the symptoms resembled those caused by morphia, yet, that these were more logically ascribable to pre-existing disease. In carefully looking over the trial there really does not appear to be a single point *proved*, that weighs a particle in evidence against the accused. No person saw Dr. Schoeppe have poison in his possession at the time; no body saw him administer any poison; the symptoms do not point to poison; what then is the real difficulty here? It may be answered in one word—*prejudice*—intense unqualified prejudice. Dr. S. is represented as a young man of good appearance and education. From what we have heard on good authority, he was in straightened circumstances, while Miss Stennecke, his patient was rich, though advanced in years. The latter had on several occasions peculiarly befriended Dr. Schoeppe, for whom she exhibited a decided partiality, which ended in a marriage contract, (the proposition rather originating on her side.) By this agreement, she was to make the doctor her sole legatee; but was to retain control over her money during her lifetime. Her will to this effect was drawn up at her own request, by Dr. Schoeppe, and witnessed by himself and his father. It was this circumstance that excited (and we may say at the first blush of the thing, *naturally*) the suspicions of the public, and aroused their prejudice. But let it be remembered that no suspicion seems to have been entertained for some time after the old lady's death, and *not until he produced this unlooked-for will*. Of course, the distant heirs-at-law took up arms, and the excited multitude was ready to join in the cry. And we admit that there certainly existed both a sufficient motive and a good opportunity to destroy life. But granted all this; shall a man be convicted of a crime because there may exist a *motive* for his perpetrating it? What a monstrous doctrine! Who then might be safe from suspicion? But further, although it was alleged that he had forged the will, the forgery has never been proved, since he was not tried for *forgery*; nor was the will produced in evidence. But if we admit the alleged forgery, this would, in our opinion, very materially diminish the likelihood of *murder*, inasmuch as the bare suspicion of the latter crime would entirely preclude the idea of his setting up such a forged instrument with any prospect of success. If the forgery had been committed, his safest course was certainly to allow his victim to live. We can now understand how this prejudice of the community, becoming strengthened by the supposed discovery of prussic acid in the stomach of the deceased by the Baltimore professor, would (we fear) almost unavoidably exert an influence on a jury. Our readers surely need not be told that juries are not infallible; neither are judges, for that matter; nor do they claim to be so.

Let us now briefly advert to the second point in the review of this trial, or rather

of the circumstances growing out of it, namely, the course pursued by the Governor of the Commonwealth, acting under the instruction of his constitutional adviser, the Attorney-General.

One of the high prerogatives lodged in the Executive by our Constitution is the pardoning power. This is predicated in the assumed possibility of a conviction on insufficient evidence. Of course, such a power may be abused; but its proper exercise, in the case of a fellow-being sentenced to death on *extremely doubtful evidence*, not only fulfils the merciful intention of the Constitution, but vindicates the higher claims of justice. Now, with the facts of the present case before us, is there an individual who has given it a fair consideration, who would not, naturally and reasonably, have anticipated an Executive pardon for the prisoner under conviction? For our own part, we have not met with a single expression of dissent, although we have freely consulted the wisest and most learned in both professions of Medicine and Law. How then is this remarkable departure on the part of Governor Geary, from his more usual method of dealing in similar cases, to be explained? It can readily be shown that the Governor's pardon-record, even though in the opinion of some it may have been too extended, bears the evidence of an honest desire not to contravene the true ends of justice; witness the repeated indorsement on different cases, of "want of sufficient evidence of guilt, &c." It would appear that, acting under the instructions of the new Attorney-General, he had suddenly determined to arrest the flow of Executive clemency, and freeze up the genial stream of mercy; and that too, in a case which, by common consent, is so peculiarly entitled to it.

With the published opinion of the Attorney-General in this case, we have nothing to do except to protest emphatically against two or three of his assumptions. First he reviews the case very briefly, and digs up Prof. Aiken's alleged discovery of prussic acid from the grave where it had been buried both by the prosecution and the Judge, and he produces it in his argument against the prisoner! Secondly, he makes an erroneous statement in asserting that "the examining physicians found no trace of disease likely to produce death;" for we have distinctly showed that the *only* morbid changes which the imperfect *post-mortem* examination did disclose (in the brain), *did most naturally point to disease*. Thirdly, he is hardly justified in saying that "the physicians who were examined testified that her death was not produced by natural causes." The real fact of the matter was that nearly all the physicians examined by the prosecution did not testify to the case at all, but to a *hypothetical* case proposed to them. Besides, these witnesses merely gave *their own interpretation* of the symptoms presented before death, and of the changes noticed in the brain after death. And what are their *opinions* on this subject, in comparison with those of the thousands of other physicians—certainly equally skilled—who have since testified directly the reverse? Fourthly, he considers the testimony of medical and chemical experts of very little account, in consequence of the "discrepancy of their evidence." This is singular reasoning for a jurist who is so conversant with criminal law. Of course there must be differences of opinion among experts in every profession; but in the case before us, there is the most remarkable unanimity of opinion in the multitudes of physicians and toxicologists, who have, both during the trial and subsequently, cheerfully rendered their testimony; and all this against the evidence of two or three witnesses for the prosecution, who, be it remembered, testified chiefly on a strong *hypothetical* case submitted to their consideration! But the Attorney-General appears to have been so perplexed and annoyed by this "disagreement of experts," and "the confusions of science" as evidently to have gotten into a muddle; so he cuts the Gordian knot of his perplexity, by summarily rejecting the whole of the expert testimony for the defence which had been heaped upon the Executive since the trial, and instructs that officer not to go behind the trial and the finding of the jury. He thereby asserts, what we conceive a monstrous doctrine, namely,

that when a jury has found a verdict, and the judge has passed sentence, and a higher court sees no technical mistake in the record, the Executive ought not, under any circumstances, to interpose, even if there be the gravest doubts of the prisoner's guilt! Alas for human infirmity! Do we not know that innocent persons have suffered unjustly, even to the loss of life, by unfair conviction? Only in one of the papers of to-day we notice the fact of the liberation from a Massachusetts prison of two convicts, whose innocence had been satisfactorily proven after four year's incarceration. What has been once may be again. Hence in view of the serious and irreparable wrong that may be inflicted on a *possibly* guiltless man, and in view, too, of the deeper wrong that would be inflicted on the body politic by such a judicial murder, we would most respectfully but earnestly call upon the Chief Magistrate of this Commonwealth to cast aside the trammels and sophisms of mere legal technicalities, and to give due consideration to the accumulated doubts of the prisoner's guilt, based upon the utter insufficiency of the testimony—direct and circumstantial—to *prove* this guilt. We would urge him to fall back upon his high and responsible prerogative of a *final* decision in this case, influenced by an enlightened conscience, and the promptings of a generous heart.

[Since the foregoing was penned, the aspect of this case has become somewhat modified, from the fact that the Attorney-General has agreed to allow a new appeal to the Supreme Court to be heard there on its proper merits. Of course, it is impossible to predict what may be the final issue; although we may indulge the hope that if the additional weight of expert testimony should be heard, the decision will be different from that of the lower court. But in any event, we may not forget that, *behind all courts* in a case of this kind, the Constitution gives to the Executive the *final* pardoning power.] R.

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With respects of D. Reese

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CIRCUIT COURT U. STATES.

The next session of the Court for Jury trials
will be in April next.

DISTRICT COURT U. STATES.

MOTION LIST.

Saturday.

- 1 Sheppard v Maury; Hornor; Doran.
- 2 Tripland v Same; Hornor; Doran.
- 3 U. S. v P Connor; Samuels; Smith.
- 4 U. S. v John Breslin; Smith; Gilpin.
- 5 U. S. v Levi W. Grove; Smith; McGrath,
Hood.
- 6 U. S. v George Mountjoy; Smith; O'Neill,
McCandless.

ADMIRALTY CALENDAR.

Friday.

- 1 Sloop Henry Gallie; Coulston; Freeman.
- 2 The Schooner Pauline Rambo; Freeman;
Coulston.
- 3 Sheppard v Sloop Emma; Coulston; Done-
gan.
- 4 Ship William Cummings; McCabe, Coch-
ran; Coulston.
- 5 Steamship Volunteer v Steam tug Lizzie
Massey; Coulston, Henry; Cleeman.
- 6 Steam Tug America; collision; Coulston;
Henry.
- 7 Robinson v The schooner Burlingame;
Henry, Longstreth.
- 8 Hellinger v Tug Taxis; Henry, Coulston.
- 9 Dallett v Brig; J D Lincoln; Crawford,
Lane and Roney.
- 10 Allen v Barque Bessie Harris; Lane and
Roney.

BANKRUPTCY CALENDAR.

Wednesday.

Hearing on petition for discharge.

- 1114 Jacob H Taylor; Yardley.
- 967 Leopold Farth; Wm L Hirst.
- 947 Frederick Steeb; Gerhard.
- 1006 Stephen H Markley; Diehl.
- 368 Thomas J Williamson; O'Byrne.
- 953 Lewis P Brooke; Hughes.
- 916 John Russell; Clayton.

- 978 William C Smith; Richard Watson.
- 538 Jacob S Deibert; O P Bechtel.
- 1035 Lewis and Philip Noot; Charles Davis.
- 974 Edward Stambaugh; Zeigler & Meyers.
- 1174 Peter S Leisnering; Fletcher.
- 945 Edward C Grove;
- 1173 Dale & Hartranft; Darling, Henry.
- 1169 Isaac Ruddisill; Weill.
- 1172 Killian & Bro;
- 208 J H Hafer & Bro; Darling, Richards.
- 161 William W Long; A V Parsons.
- 404 Philip Ford; Bradley, Temple.

SUPREME COURT OF PENNA.

NISI PRIUS.

MOTION LIST.

Saturday, December 18, 1869.

- 1 Patterson v Penna R R Co; W L Hirst;
Cuyler.
- 2 Hess et al v Fry et al; G L Crawford;
Thorne, O'Brien, Hanna.
- 3 Dohnat v Wistar; H Wharton E Walm, P P
Morris.
- 4 Spering v Smith et al; C B Penrose, E S
Miller; Paxson.
- 5 Smith v Smith; M Arnold, Jr., E H Han-
son; Dolman.
- 6 Thomas et al v West Jersey R R Co; Cuyler;
Bullitt.
- 7 Rhodes v Coughlin; W L Hirst; Briggs,
Brightly.
- 8 Lauck v Jodger; Dallas; I N Brown.
- 9 Rushton et ux v Roberts et al; Earle.
- 10 The Vulcan Oil Co v Andress;
- 11 Edwards v Westcott; Parsons, A. Thomp-
son; Pile, Sheppard.
- 12 Boyle v Gaul's Executors; Samuel; Juvenal.
- 13 McHaffey v Enterprise Coal Co; Sergeant,
McMurtrie; Webster, Gowen.
- 14 Newhall v Fielden; Dallas; F B Gowen.
- 15 Paul v Smith et al; Newlin, Littleton; Pile,
Burton.
- 16 Rowand v Justice; McCabe;
- 17 McLaughlin v Dickinson; Sellers; Junkin.
- 18 Phillips v Charleston Mining Co; Fallon;
G W Biddle.
- 19 Vetterlein et al v Egbert et al; E S Miller,
Juvenal; Dennis.
- 20 Ludwig v St. Andrew's Church et al; G W
Biddle; Cuyler.
- 21 Oliver v St. Andrew's Church et al; G W
Biddle; Cuyler.
- 22 Magee v St. Andrew's Church et al; G W
Biddle; Cuyler.
- 23 Mears v Cochran; W H Brown; W J Mc-
Elroy.
- 24 Myers v Kuhn; J S Sharp;
- 25 Seldenridge v Life Ins Co; S G Thompson;
G W Biddle.
- 26 Patterson v Clyde; J E Gowen; McMurtrie.
- 27 Pearson v Chesebrough; R R Smith,
H R Warriner.
- 28 Megargee v Naglee et al; E H Weil; J E
Gowen.
- 29 City of Philadelphia v Fox et al; W M
Meredith, Olmsted, Goforth, Gowen,
Barger; W Strong; McCall; J Fallon.
- 30 Briggs v Howell et al; Burton; C Hart.
- 31 Arthur v Penna C R R; Thayer;
- 32 Thompson v Pittston and Elmira Coal Co;
Longstreth, Townsend; Maxwell.
- 33 Faltus et al v Zimmerlein; Samuel; Sharp-
less.
- 34 Marsteller v Patton & Hager; Yerkes;

DISTRICT COURT.

CURRENT MOTION LIST.

Saturday, December 18, 1869.

- 1 Hill et al v Stitt; Johnson.
- 2 Bank v Jackson; id
- 3 Fitzpatrick v Fitzpatrick; Miller.
- 4 Cubbler v Goldsmith; Shapley;
- 5 Hay v Clendenning; White;
- 6 Addicks v id id
- 7 Repplier v Derringer; "Bladen."
- 8 Houghton v Swope;
- 9 Jeffrey v McDewitt; A Thompson.
- 10 Smiley v Mann; Russell & Hanson.
- 11 Bradford v Houghton; Orwig;
- 12 Morris v Barr; O'Byrne;
- 13 Wiley v Donahue; Redheffer;
- 14 Wood v Wright; Hunn;
- 15 Scull v Bartley; Dedrick.
- 16 id id id
- 17 id id id
- 18 Hoopes v Lewis; Judson, Johnson;
- 19 Link v Haines; Law;
- 20 Berkheiser v Middleton; Murphy;
- 21 Baker v Middleton; id
- 22 Harding v Morris; Orwig;
- 23 Frazier v Gallagher; Marshall.
- 24 Meyer v Saarback; Seldon.
- 25 Long v Lanning; Meredith;
- 26 Frank v Arnold;
- 27 Griffin v Keichline; Gerhart.
- 28 id id Archer.
- 29 Holman v Albrecht; Hayward;
- 30 Griffiths v Griffiths; "Porter;"
- 31 Powell v Rammel; Edmunds;
- 32 Hess v Fiesler; Pettit;

DEFERRED MOTION LIST.

Saturday, December 18, 1869.

- 1 Struthers v McComb; Wilson.
- 2 Wallace v Craighead; Thompson.
- 3 Shallcross v Haughey; L Hirst.
- 4 Begley v Hand;
- 5 Thomas v Carey; Budd;
- 6 Rhoads v Christman; Shapley.
- 7 Ashmore v Whitaker; Killgore.
- 8 Graham v Pierce; Thompson.

COURT OF COMMON PLEAS.

CURRENT MOTION LIST.

Saturday, December 18, 1869.

- 1 Clausen v Clausen; Ruddiman;
- 2 Chester v Chester; Wm B Mann;
- 3 Jeffries v Jeffries; Stark;
- 4 Winter v Winter; Vail.
- 5 Trust Est of Mary Little; Mitchell;
- 6 Enders v Mehlman; Powell.
- 7 Whitehead v Whitehead; C Davis;
- 8 Moore v Clyde; Shallcross;
- 9 McNeill v McNeill; McIntyre;
- 10 Thiele v Thiele; Burton;
- 11 Phara v West; Dedrick.
- 12 Naves v McCusker; M P Henry.
- 13 Petition of Thomas Martin; Edmunds;
- 14 Matsinger v Klien; Bonsall;
- 15 McCarran v Johnson; W F Johnson.
- 16 McGrath v Christman; E C Shapley.
- 17 Ward et al v Black et al; Mullin.
- 18 Estate of James Gallagher; Ferguson;
- 19 Lipp v McArdle; Bonsall; C B F O'Neill.
- 20 Barber v Barber; Goforth;

DEFERRED LIST.

- 1 McLeester v McLeester; Grace;
- 2 Albertson v Albertson; A Thompson.
- 3 Tompkins v Tompkins; A Zane, Jr;
- 4 Thompson v Thompson; Redheffer; C M
Husbands.
- 5 Meyer v Roberts; A Thompson;
- 6 Rust v Barth; Purves;
- 7 King v Halsey; S W Pettit; Lawrence.
- 8 Baston v Hartman; Thompson.
- 9 Airey v Hedges; L Hirst.
- 10 Buck v Buck; Owens;
- 11 Whitworth v Whitworth; Mitcheson;
- 12 Herbert v Simons; B F Fisher;

EQUITY ARGUMENT LIST, No. 2.

Monday, December 20, 1869.

- 1 Thomas v Harrison; Atkinson;
- 2 Remine v Womelsdorf; Coulston; C D Free-
man.
- 3 Derringer v Peacock; C M Husbands;
Sloan, Goforth.
- 4 Tracy v Cushman; Sharkey;
- 5 Fox v Wilson; Dedrick; Goforth, Sloan.
- 6 Wetham v City et al; W L Hirst; J G
Johnson.
- 7 Harrop v Pyott; Ransford;
- 8 McFee v Lippincott; Finletter;
- 9 Mount v Folwell; Outerbridge; Brinckle,
Bonham.
- 10 Norris v The City; Wharton; McMurtrie.
- 11 Kelly v Long; Harlan;
- 12 Malatesta v Logomarsino; Brown; Sellers.
- 13 Graham v Bobeck; MacFadden;
- 14 Heylin v Ashton; Thorn; McGrath.
- 15 Cheyney et al v Knight et al; Sellers, Mac-
Fadden; E S Miller.
- 16 Britton v City et al; King;
- 17 Sunderland v Whiteside et al; Rhoads;
- 18 Randel v Ely; Newlin, H G Clay; E S
Miller.
- 19 Smith v Schmitt et al; Hubbell; W B
Mitchell.
- 20 Evans v Watson; Earle;
- 21 Fiesler v Brown et al; Atwood.
- 22 Bingham's Estate; Strong, Biddle; Mc-
Murtrie, Judson.

CONTINUANCE OF NEW TRIAL MOTION LIST.

Tuesday, December 21. After Regis-
ter's Court

MOTIONS AND RULES IN EQUITY.

Wednesday, December 22d.

- 1 Cheyney et al v Wright et al; MacFadden;
Sellers.

The Orphans' Court and motion lists fixed
for Saturday, Dec. 25th, (Christmas day,) and
Saturday, January 1st, 1870, (New Year's
day,) will be heard on Friday, Dec. 24th, and
Friday, Dec. 31st; no Court will be held on
Dec. 25th, 1869, and January 1st, 1870.

REGISTERS' COURT.

There will be a Registers' Court held Tues-
day, Dec. 21, 1869.

LEGAL GAZETTE.

Friday, December 17, 1869.

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SILAS W. PETTIT,
JOHN H. CAMPBELL, } Editors.

JUDGE PEIRCE.

We have received from Judge Peirce, for publication, his charge to the Jury, delivered November 25th, in the Smith Homicide case. The charge is a clear exposition of the law of murder in its various degrees, and conveys to the jury all the knowledge requisite for their purpose. The sentence imposed upon the prisoner evinces, as usual, the solicitude of the Judge to deal with crime firmly and impartially. We print both the charge and the sentence at length in our issue of to-day.

THE CASE OF DR. SCHOEPPÉ.

We would call attention to the communication which appears in our columns to-day, concerning the Trial of Dr. Schoeppe, whose case is now attracting so much attention. It is written by an eminent physician and chemist of our city, and seems to be a careful and elaborate analysis of the subject. It will, no doubt, be interesting to many of our readers.

DISTRICT COURT.

We have been requested by Mr. Fletcher to call the attention of the profession to the fact that Christmas day and New Year's day will, this year, come on Saturday; all *fi. fas.* returnable first Saturday of January, 1870, which are to be levied on real estate, must be taken out of the office on Friday next, the 24th inst., and all other writs returnable to same day, must be taken out on Friday, the 31st inst.

The last day for filing in the Register's Office, accounts of executors, administrators, trustees and guardians, for confirmation in January, is December 30th.

THE COUNTY OF YOLO v. THE CITY OF SACRAMENTO.

PUBLIC AND PRIVATE NUISANCE.—A public nuisance may also be a private nuisance, and if so, the person thereby injured may have his action.

IDEM.—The diversion of the water of a navigable stream may be both a public and a private nuisance.

IDEM.—In so far as a wing dam in a river obstructs the navigation, it is a public nuisance; but if it obstructs the reclamation of swamp lands, it is a private nuisance.

JURISDICTION.—District Courts have jurisdiction in actions to prevent or abate a nuisance.

DEMURRER TO COMPLAINT.—A demurrer to a complaint on the ground that it is ambiguous, unintelligible, and uncertain, must specifically state in what the ambiguity or uncertainty consists, or it will be disregarded.—*36th California Reports.*

Quarter Sessions.

COMMONWEALTH v. SMITH.

Charged with the murder of Jno. Hughes, on Chestnut Street Bridge, Oct. 2, 1869.

Charge of Judge PEIRCE to the Jury, delivered Nov. 25, 1869.

Gentlemen of the Jury:—Murder is an offence so shocking to our nature that it has at all times challenged the attention of mankind, and has demanded at the hands of public justice, that on the perpetrators of it, when discovered, shall be inflicted the severest penalties known to the law. The law holds human life so sacred, that it not only visits its greatest punishment upon the destroyers of it, but from a sacred regard to the faithful administration of public justice, and to the rights of a defendant charged with this heinous offence, whose life may pay the forfeit of his crime, it will not permit a conviction of him, except upon testimony so clear and satisfactory as to exclude all reasonable doubt of the guilt of the accused, and after the most patient and careful investigation of the charge made against him.

Murder, at common law, is defined to be, when a person of sound memory and discretion, unlawfully kills any reasonable creature in being, and in the peace of the commonwealth, with malice aforethought, expressed or implied.

Whilst this definition of murder at the common law is found to embrace in it all the elements of fact and motive which constitute the offence, it has been found in actual occurrence that there are frequently qualifying circumstances which either aggravate or lessen the offence, and exhibit different degrees of guilt in the perpetrators of it.

The statute law of Pennsylvania, therefore, divides murder into two grades, and declares that "all murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing; or which shall be committed in the perpetration of, or attempt to perpetrate any arson, rape, robbery or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree."

Malice aforethought, either expressed or implied, is a necessary element to constitute the offence of murder, whether of the first or second degree. In the absence of malice, the offence at the most can be but voluntary manslaughter.

Murder of the first degree differs from murder of the second degree in this, that in murder of the first degree there must be a wilful, deliberate and premeditated intention to kill; or it must be committed in the perpetration of, or attempt to perpetrate one of the felonies named in the act.

All murder not of the first degree is, necessarily of the second degree, and includes all unlawful killing, accompanied with malice; but where no intention to kill exists, therefore, in all cases of murder, if no intention to kill can be inferred or collected from the circumstances, the verdict must be murder in the second degree.

Manslaughter is the unlawful and felonious killing of another without any malice, either express or implied. And is of two kinds:

1st. Voluntary manslaughter, which is the unlawful killing of another, without malice, on sudden quarrel, or in heat of

passion, or in the committing of some mere civil trespass.

2d. Involuntary manslaughter, which is where a man doing an unlawful act, not amounting to felony, by accident kills another.

The distinguishing criterion between murder and manslaughter, is the presence or absence of malice in the commission of the offence.

If there be malice in the killing it is murder either of the first or second degree. If there be no malice in the killing, the offence is at most but voluntary manslaughter.

Malice is *malus animus*; or that bad mind or spirit which impels one to inflict an injury upon another without cause, or any sufficient provocation. The legal sense of this term is not confined to a particular animosity against the deceased, but extends to an evil design in general, a wicked and corrupt motive, an intention to do evil, a heart regardless of social duty, and deliberately bent on mischief.

Every homicide is *prima facie* murder, and will be considered as such, until justified or excused; and therefore, when this fact is once established, and the defendant is shown to have committed the act, it rests on him to make out that he is justified, excused, or his guilt reduced to manslaughter by some adequate provocation. For all killing is taken to be both felonious and malicious, until the contrary is shown in evidence. But though the homicide without circumstances of alleviation or excuse, is presumed to be murder, it is not presumed to be murder of the first degree. The presumption against the defendant rises no higher than murder in the second degree, until it is shown by the Commonwealth to be murder of the first degree. It therefore lies on the Commonwealth to satisfy the jury of those facts and circumstances which indicate the deliberate intention to kill, and the cool depravity of heart and conscious purpose, which constitute the crime of murder in the first degree.

It is not necessary, however, that it shall be proved by any expressed declaration of the defendant that he intended to commit the murder; but it may be shown by the proof of such facts as show a wilful, deliberate and premeditated intention to kill.

In considering this branch of the case you will take into consideration all the circumstances which surround the killing, and if beyond any reasonable doubt, they show a wilful, deliberate and premeditated intention of the defendant to take the life of John Hughes, and that in execution of that intention he did take his life, then he is guilty of murder of the first degree.

On the night of the 2d of October, 1869, between the hours of ten and eleven o'clock, John Hughes, the murdered man, was crossing the Chestnut street bridge, from the east end of the bridge, going towards West Philadelphia. The first evidence we have of his being there is, he was seen engaged in a scuffle with one or more persons, on the south side of the bridge, a short distance westward of the white house, which is the last house on Chestnut street, on the south side, east of the bridge. According to the testimony of John Conway and John Hope, who are boys about sixteen years of age, the person with whom the deceased was engaged in that scuffle was Edward Smith, the prisoner; and that there were no other persons engaged in it than the prisoner and the deceased. The prisoner and these

boys had come under the arch of the bridge at Twenty-fourth street, and came up the steps on the north side; the prisoner going first, Conway following, and Hope going up last. Conway testifies that as he came up the steps he saw the prisoner cross over to where Hughes was, that he saw the scuffle, and the hands of Smith and Hughes up; that he saw Hughes striking Smith and Smith striking Hughes; that he couldn't tell who struck the first blow; that he saw Smith go at once to Hughes; that he saw him run across the street to Hughes; that they were five or ten minutes scuffling, and that he only saw them strike a couple of blows apiece; that Hughes left Smith, and went towards West Philadelphia, and that Smith came towards Twenty-third street, where Conway was standing. Smith said that the man hit him a terrible blow in the mouth, and that there was a little blood on Smith's mouth; that Smith stood with his back to him when the scuffle was going on, and that he did not see the man's face with whom he was scuffling.

Hope testified that when he got up he saw a man coming up on the south side of the bridge from Twenty-third street; that he did not know the man, and did not see anybody else on the bridge but that man and Smith, Conway, and himself. That he next saw Smith and the man quarrelling; that he, Hope, was on the north side of the bridge and crossed over to the south side of the bridge, and that Conway came over to the south side of the bridge, and was between him and Smith; that he was not near to the parties scuffling, and that Conway was about three or four yards from him. That as he went up stairs he faced west; that he saw them fighting; that he saw Smith go towards the man; he did not know that the man had said anything; he saw Smith walking to the man; he did not see him do anything when he first got there; he saw the man hit Smith and Smith hit the man; that Smith hit him a blow in the breast; that they were fighting five minutes or so. He did not hear the man say anything; he heard him hallooing as he was away; it was something like a squeal. That after Smith and the man parted, Smith came down to where Hope stood, by the Schuylkill House, and that Smith told him that he had run a knife through him; that he does not know why Smith attacked Hughes, and that there was no one else on the bridge when Smith told him that he had run a knife through him; that after Smith told him he had run a knife through the man, he spoke of the knife again and told him that he had thrown the knife and handkerchief away. He said the handkerchief had blood on it from his lip. Hope said he observed his lip, that it was cut, and that it was not cut before he met the man on the bridge.

Charles F. Miller also testified that he saw the prisoner the next evening after the murder, and that he had a cut on his lip.

Wm. Fell and Miss Hunter, who were on the bridge at this time, heard the scuffling. Miss Hunter testified that she looked around and saw three men scuffling; and both of them testified that shortly after a man came up groaning, staggering from the paved way of the bridge to the roadway, holding his side and moaning in a fearful manner. They asked him what was the matter, and he replied that some young fellow back there had put a knife into him, or stabbed him; that he passed ahead of them and that they afterwards saw him on

the north side of the bridge, west of the westernmost high lamp, where he was seen by several other persons, also, and was found dead, with a wound in his left side, which according to the testimony of Dr. Shapleigh, the coroner's physician, penetrated the apex of his heart and produced death. At a later hour of the night, and whilst the body was still on the bridge, Conway testified that he and Smith went on to the bridge again and saw a man lying there with a crowd around him. He was dead. Smith felt his pulse. Conway said that is the man you killed. Smith said, "yes, I did; but for God's sake don't tell." Conway told him to throw away his knife, and Smith said he did throw it away.

Wm. Henry Alburger and Henry Leech, the latter a lad fourteen years of age, testified that they were on the bridge that night and saw the scuffle; that four persons were engaged in it; that the man who was killed hit the larger of the three persons that were scuffling in the face, and that the one who was hit put his hand up to his face and then took it down and looked at it. He turned around to the other two and said, "come, let us go." He turned his face towards Twenty-third street, and that one of the little fellows made a dart at the man who was killed, and reached forth his hand towards the breast of the man and said, "you damned son of a bitch, I will cut the guts out of you."

They could not recognize the persons who were engaged in the scuffle, but that when this thrust was made towards the man, the man put his hand up to his breast and began to groan.

They followed the wounded man westward and saw him afterwards where he had sat down on the bridge and died.

It was also in evidence that the prisoner and the boys, Conway and Hope, had been in several taverns that night, drinking ale and whiskey; and that the prisoner in the presence of Conway and O'Hara, another witness, before Hughes had been killed, had, on that night, robbed a colored woman of her shawl and sack at the east end of the bridge. It was also in evidence that the prisoner and several of the witnesses belong to a gang or association, known as the Ramblers, which infest the western part of the city.

From this testimony, and from all the testimony in the case, you are to ascertain and determine whether or not the deceased, John Hughes, came to his death at the hands of the prisoner, Edward Smith, or from any unlawful act of his. And if you should find that the deceased came to his death at the hands of, or in consequence of, the unlawful act of the prisoner, then it will be for you to determine of what grade of offence the prisoner is guilty.

If you believe the testimony of the boys, Conway and Hope, the attack on the deceased seems to have been commenced by the prisoner, who crossed the bridge to where the deceased was, and after a few minutes scuffle with him, stabbed him with a knife. There does not seem to have been any provocation given by the deceased. What the object of the prisoner was in crossing to the deceased, does not appear. All we know is, the scuffle and the mortal wound inflicted. In determining the grade of the offence, you will take into consideration the time, place, the character of the attack, the instrument with which the wound was inflicted, and the mortal part at which the blow was aimed.

In a recent charge to the jury delivered by Mr. Justice Agnew of the Supreme Court, in Drum's Case, 8 P. F. Smith, 9, he said: "The proof of the intention to kill and of the disposition of the mind constituting murder in the first degree, under the act of Assembly, lies in the Commonwealth. But the proof need not be express or positive; it may be inferred from circumstances. If, from all the facts attending the killing, the jury can fully, reasonably and satisfactorily infer the existence of the intention to kill, and the malice of heart with which it was done, they will be warranted in so doing. He who uses upon the body of another, at some vital part, with a manifest intention to use it upon him, a deadly weapon, as an axe, a gun, a knife, or a pistol, must, in the absence of qualifying facts, be presumed to know that his blow is likely to kill; and knowing this, must be presumed to intend the death which is the probable and ordinary consequence of such an act. He who so uses a deadly weapon without a sufficient cause of provocation, must be presumed to do it wickedly, or from a bad heart. Therefore, he who takes the life of another with a deadly weapon, and with a manifest design thus to use it upon him, with sufficient time to deliberate and fully to form the conscious purpose of killing, and without any sufficient reason or cause of extenuation, is guilty of murder in the first degree."

The law fixes upon no length of time as necessary to form the intention to kill, but leaves the existence of a fully formed intent as a fact to be determined by the jury from all the facts and circumstances in the case.

If the jury should find that there was no premeditated intention of the prisoner to kill, but that the killing was the result of an unlawful attack made by the prisoner on the deceased, without any intention to take his life, but with the intention to do great bodily harm to the deceased, even though a knife was used and the mortal wound was inflicted by the knife, then it would be but murder of the second degree.

If the jury should find any evidence in the case which would lead them to believe that the killing occurred in a sudden quarrel and heat of passion without malice, then it would be but voluntary manslaughter.

Conway and Hope both testify that a blow or blows were struck by the deceased, but the effect of these blows upon the case depends upon whether they were given in defence of himself from the attack of the prisoner; or whether they were given by the deceased not in self-defence, and provoked the attack of the prisoner on him which resulted in the death of the deceased. In the latter case it would lower the grade of the offence to manslaughter.

If you should believe the testimony of the witnesses Alburger and Leech and find that three persons were engaged in the attack upon the deceased, and should find from the testimony in the case that the prisoner was one of the three persons so attacking him, and that the deceased was killed in the course of this attack, if the attack were for an unlawful purpose and to inflict great bodily harm upon the deceased, even though the mortal blow should not have been inflicted by the prisoner, if he was present aiding, assisting and abetting the attack, then he would be guilty of murder in the second degree.

If, however, the prisoner withdrew from the attack before the mortal blow was given and announced his intention to withdraw, and after that, the mortal blow was

struck, he would not be guilty either of murder or manslaughter.

It is exclusively your province, gentlemen of the jury, to determine the grade of the offence, as well as all the facts of the case which go to determine the guilt or innocence of the accused, and to render such a verdict as the evidence will justify.

In considering these questions, you will determine the credibility to be given to the witnesses, their opportunities and ability to know the facts to which they have testified, and the consistency of their story when compared with all the evidence of the case.

It has not been pressed upon you that the defendant was intoxicated, although, one of the witnesses speak of him as having been drunk that night. Intoxication is no excuse or palliation for crime, and at the most it can but reduce the grade. If this prisoner was in such a state of mind, produced by strong drink, as to be unable to form a wilful, deliberate and premeditated design to kill, it may lower the grade from murder in the first degree to murder in the second degree.

If there exists in your mind a doubt of the guilt of the defendant; or a doubt of the grade of the offence of which he is guilty; this doubt enures to the benefit of the defendant and should work his acquittal, if the doubt be that he is guilty of any offence whatever; or should reduce the grade of the offence, if the doubt should be that he is guilty of the higher grade or grades of homicide. But the doubt must fairly arise out of the evidence, or from want of sufficient evidence in the case. It must be an honest doubt; such a difficulty as fairly strikes a conscientious mind and clouds the judgment.

The proof that has been made that the defendant was guilty of a robbery that night, does not permit you to infer that the defendant was perpetrating or attempting to perpetrate a robbery of the deceased in the attack which was made upon him, if you believe that the defendant was one of the attacking party. And I do not perceive any evidence in the case which points to the fact that the object of the attack was to perpetrate a robbery of the deceased.

That the defendant was concerned in the attack upon the deceased appears probable, not only from the testimony of the boys Conway and Hope, but also from the facts proved by Alburger and Miller; the former of whom testified that the deceased struck the larger person, who was attacking him a blow in the face, that led him to put his hand to his face; and the latter of whom testified that when he saw the person the next evening he had a cut in the lip. This cut has not been accounted for by the defendant, if it were received in any other way than in the manner testified to in this case.

An alibi is a sufficient defence to a charge of this character when clearly established, but I do not perceive any such clearly established differences of time in this case, as might not be readily accounted for by variations of clocks and watches and discrepancies of recollection in a question of this character. But this fact like all other facts in the case is exclusively for your determination.

The duty which is entrusted to you, gentlemen of the jury, is one of solemn responsibility. The protection of society, the lives of our citizens, and the highest interests of the defendant, his life and liberty, are all, for the time being, in your

custody. To the discharge of this duty you will bring a calm consideration, judgments free from all bias or prejudice for or against the prisoner; and an honest determination to discharge your duty, and to render such a verdict as the evidence will warrant, and which will be just, both to the Commonwealth and to the prisoner.

On Saturday, December 4th, 1869, Judge Peirce sentenced the prisoner as follows, viz.:

Edward Smith, you have been convicted of murder of the second degree, in killing John Hughes on the Chestnut street bridge, on the night of the 2d of October last.

On the night of the murder you were a lawless prowler through the streets of Philadelphia, going from tavern to tavern, and drinking wherever you went, ready for any opportunity to indulge in your brutal propensities, and capable of any crime, even to highway robbery and murder. On that night, and but a short time before you killed John Hughes, and near to where you killed him, you committed highway robbery upon the person of an unoffending colored woman, who was quietly going to her home in West Philadelphia, and meanly took from her the shawl and saccue which she wore. To this robbery you have pleaded guilty.

The victim of your murder was a peaceable, unoffending citizen, quietly going towards his home, whom you met, and having, with some unlawful and malicious design, first engaged with him in a scuffle, you then stabbed him with a knife to the heart. Of this mortal wound your victim died before he could reach the other end of the bridge.

The evidence given at the trial would have justified the jury in rendering against you a verdict of murder of the first degree; and the Court would have no difficulty in sustaining such a verdict; but mercifully giving you the benefit of every doubt, the jury have found you guilty of murder of the second degree, and have thus saved you from the ignominious death of the gallows.

The crimes of which you have been convicted are but the natural fruit of the life which you have led. With opportunities for the useful employment of your time in industrious pursuits and the cultivation of your heart and mind all around you, you have chosen to associate with a gang of youthful idlers and outlaws like yourself, known as the Ramblers, who infest the neighborhood of the Schuylkill. Some of this gang, and of other like associations, have already been inmates of our prison; and others of them, like yourself, will sooner or later, unless they withdraw from such associations, become inmates of the Penitentiary, and may pass beyond it to the gallows.

The fate of your victim on that unfortunate night was a sad one. Receiving from your hand the blow of death, others who witnessed it reached forth no arm to assist him, nor to arrest the murderer who fled from the scene. Alone, unassisted, staggering from his wound and the loss of blood, filling the dismal night with his piteous moans, he was suffered to fall and die upon the bridge, within sight and hearing of persons who call themselves men; yet could let their fellow-man perish of a mortal wound, which they knew he had received, without one word of sympathy, one offer to assist him to his home, one effort to staunch his life blood as it flowed from his wound, or one word of consolation in his dying moments. Nay, when death had

COURT OF QUARTER SESSIONS.

Saturday, December 18, 1869.

- 1 Commonwealth ex rel Keenan v The Commandant U S Navy Yard; Hab Corpus; Ransford.
- 2 Commonwealth ex rel Peter Monaghan v Keeper of County Prison Hab; Corpus; Mullin.
- 3 Commonwealth ex rel John Doris v The Sheriff; Hab Corpus; Brooke.
- 4 Commonwealth ex rel Mary Phelan v Rebecca Carneross; Habeas Corpus; O'Byrne.
- 5 Commonwealth ex rel James Hagan v Keeper of County Prison; Hab Corpus; Hepburn.
- 6 Commonwealth ex rel Carrie L Perkins v William A Hinkson; Hab Corpus; Dougherty.
- 7 Commonwealth ex rel Nicholas Balliet v The Sheriff; Hab Corpus; Tharp.
- 8 Commonwealth ex rel Wm Y Leader et al v The Sheriff; Hab Corpus; Cornman.
- 9 Commonwealth ex rel Samuel Schmidt v The Sheriff; Hab Corpus; Cornman.
- 10 Commonwealth v Morris McHugh; Motion for new trial; Mays.
- 11 Commonwealth ex rel Thomas Cochran v Keeper of County Prison; Hab Corpus; Kilgore.
- 12 Commonwealth ex rel Mary Kempton v Wm B Kempton; Hab Corpus; Jermon.
- 13 Commonwealth v John A Brown; Rule to show cause why judgment should not be opened and forfeiture stricken off; Kneass.
- 14 Commonwealth ex rel Charles Williams and James Dane v Keeper of County Prison; Hab Corpus; Kneass.

ORPHANS' COURT.

MOTION LIST.

Saturday, December 18, 1869.

- 1 Shoemaker's Estate; To approve widow's claim; Shoemaker.
- 2 Reeves' Estate; For guardian; Bonham.
- 3 Shindler's Estate; To confirm sale; Bonham.
- 4 Hein's Estate; For order of sale; J G Johnson.
- 5 Pilling's Estate; To pay income to foreign guardian; Pancoast.
- 6 Lipman's Estate; Order of payment; Duffield.
- 7 McKenna's Estate; Rule for attachment; Duffield.
- 8 Davis' Estate; For guardian; Ludlow.
- 9 Wagner's Estate; Return to citation; C E Smith.
- 10 Sweet's Estate; For guardian; Kneass.
- 11 White's id id id id.
- 12 Rowley's Estate; Return of rule in partition; Ransford.
- 13 Stroun's Estate; To confirm sale; Hunsicker.
- 14 Tasse's Estate; Order to sell and purchase; S Hood.
- 15 Fisher's Estate; To sell real estate; G W Biddle.
- 16 Cox's Estate; For guardian; Clarke.
- 17 Adams' id id id id.
- 18 Daniel's Estate; For citation; Hanna.
- 19 O'Donnell's Estate; To confirm sale; Hepburn.
- 20 O'Donnell's Estate; To confirm sale; Hepburn.
- 21 Milligan's Estate; Order to pay; Grier.
- 22 Shindler's Estate; To pay money into Court; Bonham.
- 23 McLean's Estate; Return of sale; Flood.
- 24 Weber's Estate; For attachment; Sharp.
- 25 Hunter's Estate; For allowance; Gibbons, Freeman.
- 26 McNally's Estate; To confirm sale; O'Byrne.
- 27 Pearce's Estate; For guardian; id.

(As far as made up at 12 M. to day.)

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son street.

REAL ESTATE SALE, JAN. 4TH.

Will include—

MODERN THREE-STORY BRICK
DWELLING, No. 111 South Thirteenth street,
below Chestnut.

REAL ESTATE SALE, JAN. 18TH.

Will include—

Peremptory Sale—LARGE and VALUABLE
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No. 1119 N. SECOND ST.—Three-story
brick store and dwelling, lot 24 by 140 feet.
Subject to \$20 ground rent. Orphans' Court
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Court Sale, Estate of Cyrus Black, dec'd, and
Josephine Addison, minor.

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CIRCUIT COURT U. STATES.

The next session of the Court for Jury trials will be in April next.

DISTRICT COURT U. STATES.

MOTION LIST.

Saturday.

- 1 Sheppard v Maury; Hornor; Doran.
- 2 Tripland v Same; Hornor; Doran.
- 3 U. S. v P Connor; Samuels; Smith.
- 4 U. S. v John Breslin; Smith; Gilpin.
- 5 U. S. v Levi W. Grove; Smith; McGrath, Hood.
- 6 U. S. v George Mountjoy; Smith; O'Neill, McCandless.

ADMIRALTY CALENDAR.

Friday.

- 1 Sloop Henry Gallie; Coulston; Freeman.
- 2 The Schooner Pauline Rambo; Freeman; Coulston.
- 3 Sheppard v Sloop Emma; Coulston; Donegan.
- 4 Ship William Cummings; McCabe, Cochran; Coulston.
- 5 Steamship Volunteer v Steam tug Lizzie Massey; Coulston, Henry; Cleeman.
- 6 Steam Tug America; collision; Coulston; Henry.
- 7 Robinson v The schooner Burlingame; Henry, Longstreth.
- 8 Hellinger v Tug Taxis; Henry, Coulston.
- 9 Dallett v Brig; J D Lincoln; Crawford, Lane and Roney.
- 10 Allen v Barque Bessie Harris; Lane and Roney.

BANKRUPTCY CALENDAR.

Wednesday.

Hearing on petition for discharge.

- 1114 Jacob H Taylor; Yardley.
- 967 Leopold Farth; Wm L Hirst.
- 947 Frederick Steeb; Gerhard.
- 1006 Stephen H Markley; Diehl.
- 368 Thomas J Williamson; O'Byrne.
- 953 Lewis P Brooke; Hughes.
- 916 John Russell; Clayton.

- 978 William C Smith; Richard Watson.
- 538 Jacob S Deibert; O P Bechtel.
- 1035 Lewis and Philip Noot; Charles Davis.
- 974 Edward Stambaugh; Zeigler & Meyers.
- 1174 Peter S Leisering; Fletcher.
- 945 Edward C Grove;
- 1173 Dale & Hartranft; Darling, Henry.
- 1169 Isaac Ruddisill; Weill.
- 1172 Killian & Bro;
- 208 J H Hafer & Bro; Darling, Richards.
- 161 William W Long; A V Parsons.
- 404 Philip Ford; Bradley, Temple.

SUPREME COURT OF PENNA.

NISI PRIUS.

MOTION LIST.

Saturday, December 18, 1869.

- 1 Patterson v Penna R R Co; W L Hirst; Cuyler.
- 2 Hess et al v Fry et al; G L Crawford; Thorne, O'Brien, Hanna.
- 3 Dohnat v Wistar; H Wharton E Waln, P P Morris.
- 4 Spring v Smith et al; C B Penrose, E S Miller; Paxson.
- 5 Smith v Smith; M Arnold, Jr., E H Hanson; Dolman.
- 6 Thomas et al v West Jersey R R Co; Cuyler; Bullitt.
- 7 Rhodes v Coughlin; W L Hirst; Briggs, Brightly.
- 8 Lauck v Jodger; Dallas; I N Brown.
- 9 Rushton et ux v Roberts et al; Earle.
- 10 The Vulcan Oil Co v Andress;
- 11 Edwards v Westcott; Parsons, A. Thompson; Pile, Sheppard.
- 12 Boyle v Gaul's Executors; Samuel; Juvenal.
- 13 Mehaffey v Enterprise Coal Co; Sergeant, McMurtrie; Webster, Gowen.
- 14 Newhall v Fielden; Dallas; F B Gowen.
- 15 Paul v Smith et al; Newlin, Littleton; Pile, Burton.
- 16 Rowand v Justice; McCabe;
- 17 McLaughlin v Dickinson; Sellers, Junkin.
- 18 Phillips v Charleston Mining Co; Fallon; G. W. Biddle.
- 19 Vetterlein et al v Egbert et al; E S Miller, Juvenal; Dennis.
- 20 Ludwig v St. Andrew's Church et al; G W Biddle; Cuyler.
- 21 Oliver v St. Andrew's Church et al; G W Biddle; Cuyler.
- 22 Magee v St. Andrew's Church et al; G W Biddle; Cuyler.
- 23 Mears v Cochran; W H Brown; W J McElroy.
- 24 Myers v Kuhn; J S Sharp;
- 25 Seldenridge v Life Ins Co; S G Thompson; G W Biddle.
- 26 Patterson v Clyde; J E Gowen; McMurtrie.
- 27 Pearson v Chesebrough; R R Smith, H R Warriner.
- 28 Megargee v Naglee et al; E H Weil; J E Gowen.
- 29 City of Philadelphia v Fox et al; W M Meredith, Olmsted, Goforth, Gowen, Barger; W Strong; McCall; J Fallon.
- 30 Briggs v Howell et al; Burton; C Hart.
- 31 Arthur v Penna C R R; Thayer;
- 32 Thompson v Pittston and Elmira Coal Co; Longstreth, Townsend; Maxwell.
- 33 Faltus et al v Zimmerlein; Samuel; Sharpless.
- 34 Marsteller v Patton & Hager; Yerkes;

DISTRICT COURT.

CURRENT MOTION LIST.

Saturday, December 18, 1869.

- 1 Hill et al v Stitt; Johnson.
- 2 Bank v Jackson; id
- 3 Fitzpatrick v Fitzpatrick; Miller.
- 4 Cubbler v Goldsmith; Shapley;
- 5 Hay v Clendenning; White;
- 6 Addicks v id id
- 7 Repplier v Derringer; "Bladen."
- 8 Houghton v Swope;
- 9 Jeffrey v McDevitt; A Thompson.
- 10 Smiley v Mann; Russell & Hanson.
- 11 Bradford v Houghton; Orwig;
- 12 Morris v Barr; O'Byrne;
- 13 Wiley v Donahue; Redheffer;
- 14 Wood v Wright; Hunn;
- 15 Scull v Bartley; Dedrick.
- 16 id id id
- 17 id id id
- 18 Hoopes v Lewis; Judson, Johnson;
- 19 Link v Haines; Law;
- 20 Berkheiser v Middleton; Murphy;
- 21 Baker v Middleton; id
- 22 Harding v Morris; Orwig;
- 23 Frazier v Gallagher; Marshall.
- 24 Meyer v Saarback; Seldon.
- 25 Long v Lenning; Meredith;
- 26 Frank v Arnold;
- 27 Griffin v Keichline; Gerhart.
- 28 id id Archer.
- 29 Holman v Albrecht; Hayward;
- 30 Griffiths v Griffiths; "Porter;"
- 31 Powell v Rammel; Edmunds;
- 32 Hess v Fiesler; Pettit;

DEFERRED MOTION LIST.

Saturday, December 18, 1869.

- 1 Struthers v McComb; Wilson.
- 2 Wallace v Craighead; Thompson.
- 3 Shallcross v Haughey; L Hirst.
- 4 Begley v Hand;
- 5 Thomas v Carey; Budd;
- 6 Rhoads v Christman; Shapley.
- 7 Ashmore v Whitaker; Killgore.
- 8 Graham v Pierce; Thompson.

COURT OF COMMON PLEAS.

CURRENT MOTION LIST.

Saturday, December 18, 1869.

- 1 Clausen v Clausen; Ruddiman;
- 2 Chester v Chester; Wm B Mann;
- 3 Jeffries v Jeffries; Stark;
- 4 Winter v Winter; Vall.
- 5 Trust Est of Mary Little; Mitchell;
- 6 Enders v Mehlman; Powell.
- 7 Whitehead v Whitehead; C Davis;
- 8 Moore v Clyde; Shallcross;
- 9 McNeill v McNeill; McIntyre;
- 10 Thiele v Thiele; Burton;
- 11 Phara v West; Dedrick.
- 12 Naves v McCusker; M P Henry.
- 13 Petition of Thomas Martin; Edmunds;
- 14 Matsinger v Klien; Bonsall;
- 15 McCarran v Johnson; W F Johnson.
- 16 McGrath v Christman; E C Shapley.
- 17 Ward et al v Black et al; Mullin.
- 18 Estate of James Gallagher; Ferguson;
- 19 Lipp v McArdle; Bonsall; C B F O'Neill.
- 20 Barber v Barber; Goforth;

DEFERRED LIST.

- 1 McLeester v McLeester; Grace;
- 2 Albertson v Albertson; A Thompson.
- 3 Tompkins v Tompkins; A Zane, Jr;
- 4 Thompson v Thompson; Redheffer; C M Husbands.
- 5 Meyer v Roberts; A Thompson;
- 6 Rust v Barth; Purves;
- 7 King v Halsey; S W Pettit; Lawrence.
- 8 Baston v Hartman; Thompson.
- 9 Airey v Hedges; L Hirst.
- 10 Buck v Buck; Owens;
- 11 Whitworth v Whitworth; Mitcheson;
- 12 Herbert v Simons; B F Fisher;

EQUITY ARGUMENT LIST, No. 2.

Monday, December 20, 1869.

- 1 Thomas v Harrison; Atkinson;
- 2 Remine v Womelsdorf; Coulston; C D Freeman.
- 3 Derringer v Peacock; C M Husbands; Sloan, Goforth.
- 4 Tracy v Cushman; Sharkey;
- 5 Fox v Wilson; Dedrick; Goforth, Sloan.
- 6 Wetham v City et al; W L Hirst; J G Johnson.
- 7 Harrop v Pyott; Ransford;
- 8 McFee v Lippincott; Finletter;
- 9 Mount v Folwell; Unterbridge; Brinckle, Bonham.
- 10 Norris v The City; Wharton; McMurtrie.
- 11 Kelly v Long; Harlan;
- 12 Malatesta v Logomarsino; Brown; Sellers.
- 13 Graham v Bobeck; MacFadden;
- 14 Heylin v Ashton; Thorn; McGrath.
- 15 Cheyney et al v Knight et al; Sellers, MacFadden; E S Miller.
- 16 Britton v City et al; King;
- 17 Sunderland v Whiteside et al; Rhoads;
- 18 Randel v Ely; Newlin, H G Clay; E S Miller.
- 19 Smith v Schmitt et al; Hubbell; W B Mitchell.
- 20 Evans v Watson; Earle;
- 21 Fiesler v Brown et al; Atwood.
- 22 Bingham's Estate; Strong, Biddle; McMurtrie, Judson.

CONTINUANCE OF NEW TRIAL MOTION LIST.

Tuesday, December 21. After Register's Court

MOTIONS AND RULES IN EQUITY.

Wednesday, December 22d.

- 1 Cheyney et al v Wright et al; MacFadden; Sellers.

The Orphans' Court and motion lists fixed for Saturday, Dec. 25th, (Christmas day,) and Saturday, January 1st, 1870, (New Year's day,) will be heard on Friday, Dec. 24th, and Friday, Dec. 31st; no Court will be held on Dec. 25th, 1869, and January 1st, 1870.

REGISTERS' COURT.

There will be a Registers' Court held Tuesday, Dec. 21, 1869.

LEGAL GAZETTE.

Friday, December 17, 1869.

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SILAS W. PETTIT, } Editors.
JOHN H. CAMPBELL, }

JUDGE PEIRCE.

We have received from Judge Peirce, for publication, his charge to the Jury, delivered November 25th, in the Smith Homicide case. The charge is a clear exposition of the law of murder in its various degrees, and conveys to the jury all the knowledge requisite for their purpose. The sentence imposed upon the prisoner evinces, as usual, the solicitude of the Judge to deal with crime firmly and impartially. We print both the charge and the sentence at length in our issue of to-day.

THE CASE OF DR. SCHOEPPE.

We would call attention to the communication which appears in our columns to-day, concerning the Trial of Dr. Schoeppe, whose case is now attracting so much attention. It is written by an eminent physician and chemist of our city, and seems to be a careful and elaborate analysis of the subject. It will, no doubt, be interesting to many of our readers.

DISTRICT COURT.

We have been requested by Mr. Fletcher to call the attention of the profession to the fact that Christmas day and New Year's day will, this year, come on Saturday; all *f. fas.* returnable first Saturday of January, 1870, which are to be levied on real estate, must be taken out of the office on Friday next, the 24th inst., and all other writs returnable to same day, must be taken out on Friday, the 31st inst.

The last day for filing in the Register's Office, accounts of executors, administrators, trustees and guardians, for confirmation in January, is December 30th.

THE COUNTY OF YOLO v. THE CITY OF SACRAMENTO.

PUBLIC AND PRIVATE NUISANCE.—A public nuisance may also be a private nuisance, and if so, the person thereby injured may have his action.

IDEM.—The diversion of the water of a navigable stream may be both a public and a private nuisance.

IDEM.—In so far as a wing dam in a river obstructs the navigation, it is a public nuisance; but if it obstructs the reclamation of swamp lands, it is a private nuisance.

JURISDICTION.—District Courts have jurisdiction in actions to prevent or abate a nuisance.

DEMURRER TO COMPLAINT.—A demurrer to a complaint on the ground that it is ambiguous, unintelligible, and uncertain, must specifically state in what the ambiguity or uncertainty consists, or it will be disregarded.—*36th California Reports,*

Quarter Sessions.

COMMONWEALTH v. SMITH.

Charged with the murder of Jno. Hughes, on Chestnut Street Bridge, Oct. 2, 1869.

Charge of Judge PEIRCE to the Jury, delivered Nov. 25, 1869.

Gentlemen of the Jury:—Murder is an offence so shocking to our nature that it has at all times challenged the attention of mankind, and has demanded at the hands of public justice, that on the perpetrators of it, when discovered, shall be inflicted the severest penalties known to the law. The law holds human life so sacred, that it not only visits its greatest punishment upon the destroyers of it, but from a sacred regard to the faithful administration of public justice, and to the rights of a defendant charged with this heinous offence, whose life may pay the forfeit of his crime, it will not permit a conviction of him, except upon testimony so clear and satisfactory as to exclude all reasonable doubt of the guilt of the accused, and after the most patient and careful investigation of the charge made against him.

Murder, at common law, is defined to be, when a person of sound memory and discretion, unlawfully kills any reasonable creature in being, and in the peace of the commonwealth, with malice aforethought, expressed or implied.

Whilst this definition of murder at the common law is found to embrace in it all the elements of fact and motive which constitute the offence, it has been found in actual occurrence that there are frequently qualifying circumstances which either aggravate or lessen the offence, and exhibit different degrees of guilt in the perpetrators of it.

The statute law of Pennsylvania, therefore, divides murder into two grades, and declares that "all murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing; or which shall be committed in the perpetration of, or attempt to perpetrate any arson, rape, robbery or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree."

Malice aforethought, either expressed or implied, is a necessary element to constitute the offence of murder, whether of the first or second degree. In the absence of malice, the offence at the most can be but voluntary manslaughter.

Murder of the first degree differs from murder of the second degree in this, that in murder of the first degree there must be a wilful, deliberate and premeditated intention to kill; or it must be committed in the perpetration of, or attempt to perpetrate one of the felonies named in the act.

All murder not of the first degree is, necessarily of the second degree, and includes all unlawful killing, accompanied with malice; but where no intention to kill exists, therefore, in all cases of murder, if no intention to kill can be inferred or collected from the circumstances, the verdict must be murder in the second degree.

Manslaughter is the unlawful and felonious killing of another without any malice, either express or implied. And is of two kinds:

1st. Voluntary manslaughter, which is the unlawful killing of another, without malice, on sudden quarrel, or in heat of

passion, or in the committing of some mere civil trespass.

2d. Involuntary manslaughter, which is where a man doing an unlawful act, not amounting to felony, by accident kills another.

The distinguishing criterion between murder and manslaughter, is the presence or absence of malice in the commission of the offence.

If there be malice in the killing it is murder either of the first or second degree. If there be no malice in the killing, the offence is at most but voluntary manslaughter.

Malice is *malus animus*; or that bad mind or spirit which impels one to inflict an injury upon another without cause, or any sufficient provocation. The legal sense of this term is not confined to a particular animosity against the deceased, but extends to an evil design in general, a wicked and corrupt motive, an intention to do evil, a heart regardless of social duty, and deliberately bent on mischief.

Every homicide is *prima facie* murder, and will be considered as such, until justified or excused; and therefore, when this fact is once established, and the defendant is shown to have committed the act, it rests on him to make out that he is justified, excused, or his guilt reduced to manslaughter by some adequate provocation. For all killing is taken to be both felonious and malicious, until the contrary is shown in evidence. But though the homicide without circumstances of alleviation or excuse, is presumed to be murder, it is not presumed to be murder of the first degree. The presumption against the defendant rises no higher than murder in the second degree, until it is shown by the Commonwealth to be murder of the first degree. It therefore lies on the Commonwealth to satisfy the jury of those facts and circumstances which indicate the deliberate intention to kill, and the cool depravity of heart and conscious purpose, which constitute the crime of murder in the first degree.

It is not necessary, however, that it shall be proved by any expressed declaration of the defendant that he intended to commit the murder; but it may be shown by the proof of such facts as show a wilful, deliberate and premeditated intention to kill.

In considering this branch of the case you will take into consideration all the circumstances which surround the killing, and if beyond any reasonable doubt, they show a wilful, deliberate and premeditated intention of the defendant to take the life of John Hughes, and that in execution of that intention he did take his life, then he is guilty of murder of the first degree.

On the night of the 2d of October, 1869, between the hours of ten and eleven o'clock, John Hughes, the murdered man, was crossing the Chestnut street bridge, from the east end of the bridge, going towards West Philadelphia. The first evidence we have of his being there is, he was seen engaged in a scuffle with one or more persons, on the south side of the bridge, a short distance westward of the white house, which is the last house on Chestnut street, on the south side, east of the bridge. According to the testimony of John Conway and John Hope, who are boys about sixteen years of age, the person with whom the deceased was engaged in that scuffle was Edward Smith, the prisoner; and that there were no other persons engaged in it than the prisoner and the deceased. The prisoner and these

boys had come under the arch of the bridge at Twenty-fourth street, and came up the steps on the north side; the prisoner going first, Conway following, and Hope going up last. Conway testifies that as he came up the steps he saw the prisoner cross over to where Hughes was, that he saw the scuffle, and the hands of Smith and Hughes up; that he saw Hughes striking Smith and Smith striking Hughes; that he couldn't tell who struck the first blow; that he saw Smith go at once to Hughes; that he saw him run across the street to Hughes; that they were five or ten minutes scuffling, and that he only saw them strike a couple of blows apiece; that Hughes left Smith, and went towards West Philadelphia, and that Smith came towards Twenty-third street, where Conway was standing. Smith said that the man hit him a terrible blow in the mouth, and that there was a little blood on Smith's mouth; that Smith stood with his back to him when the scuffle was going on, and that he did not see the man's face with whom he was scuffling.

Hope testified that when he got up he saw a man coming up on the south side of the bridge from Twenty-third street; that he did not know the man, and did not see anybody else on the bridge but that man and Smith, Conway, and himself. That he next saw Smith and the man quarrelling; that he, Hope, was on the north side of the bridge and crossed over to the south side of the bridge, and that Conway came over to the south side of the bridge, and was between him and Smith; that he was not near to the parties scuffling, and that Conway was about three or four yards from him. That as he went up stairs he faced west; that he saw them fighting; that he saw Smith go towards the man; he did not know that the man had said anything; he saw Smith walking to the man; he did not see him do anything when he first got there; he saw the man hit Smith and Smith hit the man; that Smith hit him a blow in the breast; that they were fighting five minutes or so. He did not hear the man say anything; he heard him hallooing as he was away; it was something like a squeal. That after Smith and the man parted, Smith came down to where Hope stood, by the Schuylkill House, and that Smith told him that he had run a knife through him; that he does not know why Smith attacked Hughes, and that there was no one else on the bridge when Smith told him that he had run a knife through him; that after Smith told him he had run a knife through the man, he spoke of the knife again and told him that he had thrown the knife and handkerchief away. He said the handkerchief had blood on it from his lip. Hope said he observed his lip, that it was cut, and that it was not cut before he met the man on the bridge.

Charles F. Miller also testified that he saw the prisoner the next evening after the murder, and that he had a cut on his lip.

Wm. Fell and Miss Hunter, who were on the bridge at this time, heard the scuffling. Miss Hunter testified that she looked around and saw three men scuffling; and both of them testified that shortly after a man came up groaning, staggering from the paved way of the bridge to the roadway, holding his side and moaning in a fearful manner. They asked him what was the matter, and he replied that some young fellow back there had put a knife into him, or stabbed him; that he passed ahead of them and that they afterwards saw him on

the north side of the bridge, west of the westernmost high lamp, where he was seen by several other persons, also, and was found dead, with a wound in his left side, which according to the testimony of Dr. Shapleigh, the coroner's physician, penetrated the apex of his heart and produced death. At a later hour of the night, and whilst the body was still on the bridge, Conway testified that he and Smith went on to the bridge again and saw a man lying there with a crowd around him. He was dead. Smith felt his pulse. Conway said that is the man you killed. Smith said, "yes, I did; but for God's sake don't tell." Conway told him to throw away his knife, and Smith said he did throw it away.

Wm. Henry Alburger and Henry Leech, the latter a lad fourteen years of age, testified that they were on the bridge that night and saw the scuffle; that four persons were engaged in it; that the man who was killed hit the larger of the three persons that were scuffling in the face, and that the one who was hit put his hand up to his face and then took it down and looked at it. He turned around to the other two and said, "come, let us go." He turned his face towards Twenty-third street, and that one of the little fellows made a dart at the man who was killed, and reached forth his hand towards the breast of the man and said, "you damned son of a bitch, I will cut the guts out of you."

They could not recognize the persons who were engaged in the scuffle, but that when this thrust was made towards the man, the man put his hand up to his breast and began to groan.

They followed the wounded man westward and saw him afterwards where he had sat down on the bridge and died.

It was also in evidence that the prisoner and the boys, Conway and Hope, had been in several taverns that night, drinking ale and whiskey; and that the prisoner in the presence of Conway and O'Hara, another witness, before Hughes had been killed, had, on that night, robbed a colored woman of her shawl and sack at the east end of the bridge. It was also in evidence that the prisoner and several of the witnesses belong to a gang or association, known as the Ramblers, which infest the western part of the city.

From this testimony, and from all the testimony in the case, you are to ascertain and determine whether or not the deceased, John Hughes, came to his death at the hands of the prisoner, Edward Smith, or from any unlawful act of his. And if you should find that the deceased came to his death at the hands of, or in consequence of, the unlawful act of the prisoner, then it will be for you to determine of what grade of offence the prisoner is guilty.

If you believe the testimony of the boys, Conway and Hope, the attack on the deceased seems to have been commenced by the prisoner, who crossed the bridge to where the deceased was, and after a few minutes scuffle with him, stabbed him with a knife. There does not seem to have been any provocation given by the deceased. What the object of the prisoner was in crossing to the deceased, does not appear. All we know is, the scuffle and the mortal wound inflicted. In determining the grade of the offence, you will take into consideration the time, place, the character of the attack, the instrument with which the wound was inflicted, and the mortal part at which the blow was aimed.

In a recent charge to the jury delivered by Mr. Justice Agnew of the Supreme Court, in Drum's Case, 8 P. F. Smith, 9, he said: "The proof of the intention to kill and of the disposition of the mind constituting murder in the first degree, under the act of Assembly, lies in the Commonwealth. But the proof need not be express or positive; it may be inferred from circumstances. If, from all the facts attending the killing, the jury can fully, reasonably and satisfactorily infer the existence of the intention to kill, and the malice of heart with which it was done, they will be warranted in so doing. He who uses upon the body of another, at some vital part, with a manifest intention to use it upon him, a deadly weapon, as an axe, a gun, a knife, or a pistol, must, in the absence of qualifying facts, be presumed to know that his blow is likely to kill; and knowing this, must be presumed to intend the death which is the probable and ordinary consequence of such an act. He who so uses a deadly weapon without a sufficient cause of provocation, must be presumed to do it wickedly, or from a bad heart. Therefore, he who takes the life of another with a deadly weapon, and with a manifest design thus to use it upon him, with sufficient time to deliberate and fully to form the conscious purpose of killing, and without any sufficient reason or cause of extenuation, is guilty of murder in the first degree."

The law fixes upon no length of time as necessary to form the intention to kill, but leaves the existence of a fully formed intent as a fact to be determined by the jury from all the facts and circumstances in the case.

If the jury should find that there was no premeditated intention of the prisoner to kill, but that the killing was the result of an unlawful attack made by the prisoner on the deceased, without any intention to take his life, but with the intention to do great bodily harm to the deceased, even though a knife was used and the mortal wound was inflicted by the knife, then it would be but murder of the second degree.

If the jury should find any evidence in the case which would lead them to believe that the killing occurred in a sudden quarrel and heat of passion without malice, then it would be but voluntary manslaughter.

Conway and Hope both testify that a blow or blows were struck by the deceased, but the effect of these blows upon the case depends upon whether they were given in defence of himself from the attack of the prisoner; or whether they were given by the deceased not in self-defence, and provoked the attack of the prisoner on him which resulted in the death of the deceased. In the latter case it would lower the grade of the offence to manslaughter.

If you should believe the testimony of the witnesses Alburger and Leech and find that three persons were engaged in the attack upon the deceased, and should find from the testimony in the case that the prisoner was one of the three persons so attacking him, and that the deceased was killed in the course of this attack, if the attack were for an unlawful purpose and to inflict great bodily harm upon the deceased, even though the mortal blow should not have been inflicted by the prisoner, if he was present aiding, assisting and abetting the attack, then he would be guilty of murder in the second degree.

If, however, the prisoner withdrew from the attack before the mortal blow was given and announced his intention to withdraw, and after that, the mortal blow was

struck, he would not be guilty either of murder or manslaughter.

It is exclusively your province, gentlemen of the jury, to determine the grade of the offence, as well as all the facts of the case which go to determine the guilt or innocence of the accused, and to render such a verdict as the evidence will justify.

In considering these questions, you will determine the credibility to be given to the witnesses, their opportunities and ability to know the facts to which they have testified, and the consistency of their story when compared with all the evidence of the case.

It has not been pressed upon you that the defendant was intoxicated, although, one of the witnesses speak of him as having been drunk that night. Intoxication is no excuse or palliation for crime, and at the most it can but reduce the grade. If this prisoner was in such a state of mind, produced by strong drink, as to be unable to form a wilful, deliberate and premeditated design to kill, it may lower the grade from murder in the first degree to murder in the second degree.

If there exists in your mind a doubt of the guilt of the defendant; or a doubt of the grade of the offence of which he is guilty; this doubt enures to the benefit of the defendant and should work his acquittal, if the doubt be that he is guilty of any offence whatever; or should reduce the grade of the offence, if the doubt should be that he is guilty of the higher grade or grades of homicide. But the doubt must fairly arise out of the evidence, or from want of sufficient evidence in the case. It must be an honest doubt; such a difficulty as fairly strikes a conscientious mind and clouds the judgment.

The proof that has been made that the defendant was guilty of a robbery that night, does not permit you to infer that the defendant was perpetrating or attempting to perpetrate a robbery of the deceased in the attack which was made upon him, if you believe that the defendant was one of the attacking party. And I do not perceive any evidence in the case which points to the fact that the object of the attack was to perpetrate a robbery of the deceased.

That the defendant was concerned in the attack upon the deceased appears probable, not only from the testimony of the boys Conway and Hope, but also from the facts proved by Alburger and Miller; the former of whom testified that the deceased struck the larger person, who was attacking him a blow in the face, that led him to put his hand to his face; and the latter of whom testified that when he saw the person the next evening he had a cut in the lip. This cut has not been accounted for by the defendant, if it were received in any other way than in the manner testified to in this case.

An alibi is a sufficient defence to a charge of this character when clearly established, but I do not perceive any such clearly established differences of time in this case, as might not be readily accounted for by variations of clocks and watches and discrepancies of recollection in a question of this character. But this fact like all other facts in the case is exclusively for your determination.

The duty which is entrusted to you, gentlemen of the jury, is one of solemn responsibility. The protection of society, the lives of our citizens, and the highest interests of the defendant, his life and liberty, are all, for the time being, in your

custody. To the discharge of this duty you will bring a calm consideration, judgments free from all bias or prejudice for or against the prisoner; and an honest determination to discharge your duty, and to render such a verdict as the evidence will warrant, and which will be just, both to the Commonwealth and to the prisoner.

On Saturday, December 4th, 1869, Judge Peirce sentenced the prisoner as follows, viz.:

Edward Smith, you have been convicted of murder of the second degree, in killing John Hughes on the Chestnut street bridge, on the night of the 2d of October last.

On the night of the murder you were a lawless prowler through the streets of Philadelphia, going from tavern to tavern, and drinking wherever you went, ready for any opportunity to indulge in your brutal propensities, and capable of any crime, even to highway robbery and murder. On that night, and but a short time before you killed John Hughes, and near to where you killed him, you committed highway robbery upon the person of an unoffending colored woman, who was quietly going to her home in West Philadelphia, and meanly took from her the shawl and saccue which she wore. To this robbery you have pleaded guilty.

The victim of your murder was a peaceable, unoffending citizen, quietly going towards his home, whom you met, and having, with some unlawful and malicious design, first engaged with him in a scuffle, you then stabbed him with a knife to the heart. Of this mortal wound your victim died before he could reach the other end of the bridge.

The evidence given at the trial would have justified the jury in rendering against you a verdict of murder of the first degree; and the Court would have no difficulty in sustaining such a verdict; but mercifully giving you the benefit of every doubt, the jury have found you guilty of murder of the second degree, and have thus saved you from the ignominious death of the gallows.

The crimes of which you have been convicted are but the natural fruit of the life which you have led. With opportunities for the useful employment of your time in industrious pursuits and the cultivation of your heart and mind all around you, you have chosen to associate with a gang of youthful idlers and outlaws like yourself, known as the Ramblers, who infest the neighborhood of the Schuylkill. Some of this gang, and of other like associations, have already been inmates of our prison; and others of them, like yourself, will sooner or later, unless they withdraw from such associations, become inmates of the Penitentiary, and may pass beyond it to the gallows.

The fate of your victim on that unfortunate night was a sad one. Receiving from your hand the blow of death, others who witnessed it reached forth no arm to assist him, nor to arrest the murderer who fled from the scene. Alone, unassisted, staggering from his wound and the loss of blood, filling the dismal night with his piteous moans, he was suffered to fall and die upon the bridge, within sight and hearing of persons who call themselves men; yet could let their fellow-man perish of a mortal wound, which they knew he had received, without one word of sympathy, one offer to assist him to his home, one effort to staunch his life blood as it flowed from his wound, or one word of consolation in his dying moments. Nay, when death had

COURT OF QUARTER SESSIONS.

Saturday, December 18, 1869.

- 1 Commonwealth ex rel Keenan v The Commandant U S Navy Yard; Hab Corpus; Ransford.
- 2 Commonwealth ex rel Peter Monaghan v Keeper of County Prison Hab; Corpus; Mullin.
- 3 Commonwealth ex rel John Doris v The Sheriff; Hab Corpus; Brooke.
- 4 Commonwealth ex rel Mary Phelan v Rebecca Carncross; Habeas Corpus; O'Byrne.
- 5 Commonwealth ex rel James Hagan v Keeper of County Prison; Hab Corpus; Hepburn.
- 6 Commonwealth ex rel Carrie L Perkins v William A Hinkson; Hab Corpus; Dougherty.
- 7 Commonwealth ex rel Nicholas Balliet v The Sheriff; Hab Corpus; Tharp.
- 8 Commonwealth ex rel Wm Y Leader et al v The Sheriff; Hab Corpus; Cornman.
- 9 Commonwealth ex rel Samuel Schmidt v The Sheriff; Hab Corpus; Cornman.
- 10 Commonwealth v Morris McHugh; Motion for new trial; Mays.
- 11 Commonwealth ex rel Thomas Cochran v Keeper of County Prison; Hab Corpus; Kilgore.
- 12 Commonwealth ex rel Mary Kempton v Wm B Kempton; Hab Corpus; Jermon.
- 13 Commonwealth v John A Brown; Rule to show cause why judgment should not be opened and forfeiture stricken off; Kneass.
- 14 Commonwealth ex rel Charles Williams and James Dane v Keeper of County Prison; Hab Corpus; Kneass.

ORPHANS' COURT.

MOTION LIST.

Saturday, December 18, 1869.

- 1 Shoemaker's Estate; To approve widow's claim; Shoemaker.
 - 2 Reeves' Estate; For guardian; Bonham.
 - 3 Shindler's Estate; To confirm sale; Bonham.
 - 4 Hein's Estate; For order of sale; J G Johnson.
 - 5 Pilling's Estate; To pay income to foreign guardian; Pancoast.
 - 6 Lipman's Estate; Order of payment; Duffield.
 - 7 McKenna's Estate; Rule for attachment; Duffield.
 - 8 Davis' Estate; For guardian; Ludlow.
 - 9 Wagner's Estate; Return to citation; C E Smith.
 - 10 Sweet's Estate; For guardian; Kneass.
 - 11 White's id id id id
 - 12 Rowley's Estate; Return of rule in partition; Ransford.
 - 13 Stroun's Estate; To confirm sale; Hunsicker.
 - 14 Tasse's Estate; Order to sell and purchase; S Hood.
 - 15 Fisher's Estate; To sell real estate; G W Biddle.
 - 16 Cox's Estate; For guardian; Clarke.
 - 17 Adams' id id id id
 - 18 Daniel's Estate; For citation; Hanna.
 - 19 O'Donnell's Estate; To confirm sale; Hepburn.
 - 20 O'Donnell's Estate; To confirm sale; Hepburn.
 - 21 Milligan's Estate; Order to pay; Grier.
 - 22 Shindler's Estate; To pay money into Court; Bonham.
 - 23 McLean's Estate; Return of sale; Flood.
 - 24 Wehr's Estate; For attachment; Sharp.
 - 25 Hunter's Estate; For allowance; Gibbons, Freeman.
 - 26 McNally's Estate; To confirm sale; O'Byrne.
 - 27 Pearce's Estate; For guardian; id.
- (As far as made up at 12 M. to day.)

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Written translations will be promptly and faithfully attended to.
nov 19-3t

M. THOMAS & SONS,
AUCTIONEERS.

REAL ESTATE SALE, DEC. 21ST.

VALUABLE FARM, 116 ACRES, Chester County, Pa., about one mile from the New London Post Town.

NEW THREE-STORY BROWN STONE DWELLING, No. 3250 Sansom street. Has the modern conveniences. Immediate possession.

Executors' Peremptory Sale—Estate of Patrick Ternan, deceased—3 FRAME DWELLINGS, Nos. 202, 204 and 208 Prosperous alley, south of Locust street, and between Tenth and Eleventh streets.

Assignee's Peremptory Sale—LARGE and VALUABLE THREE-STORY BRICK RESIDENCE, No. 923 Spruce street, (Portico Row,) between 9th and 10th streets. Well built, and has the modern conveniences.

Same Estate—GENTEEL THREE-STORY BRICK DWELLING, No. 1115 Spruce street. Has the modern conveniences.

HANDSOME MODERN FOUR-STORY BROWN STONE RESIDENCE, No. 1623 Vine street. Has the modern conveniences. Immediate possession.

LARGE and VALUABLE COAL YARD, S. W. corner of 23d and Washington av., 96 feet front, 130 feet to Alter street.

WELL-SECURED REDEEMABLE GROUND RENT, \$75 a year.

REAL ESTATE SALE, DEC. 28TH.

Will include—

VALUABLE LEASE, Good-will, Stock and Fixtures of a Porter, Ale and Mineral Water establishment, Cape Island, N. J.

DESIRABLE THREE-STORY BRICK RESIDENCE, No. 1632 Cherry street, east of 17th street.

MODERN THREE-STORY BRICK RESIDENCE, No. 1523 N. 13th street, above Jefferson street.

REAL ESTATE SALE, JAN. 4TH.

Will include—

MODERN THREE-STORY BRICK DWELLING, No. 111 South Thirteenth street, below Chestnut.

REAL ESTATE SALE, JAN. 18TH.

Will include—

Peremptory Sale—LARGE and VALUABLE LOT, N. W. corner of Broad street and Girard avenue, 280 feet front on Broad street, 160 feet front on Girard avenue, 280 feet front on Carlisle street, 160 feet front on Stiles street—four fronts.

JAMES A. FREEMAN,
AUCTIONEER,
No. 422 WALNUT STREET.

Real Estate Sale, December 29th, 1869.

This sale, on Wednesday, at 12 o'clock, noon, at the Exchange, will include—

No. 1119 N. SECOND ST.—Three-story brick store and dwelling, lot 24 by 140 feet. Subject to \$20 ground rent. *Orphans' Court Sale, Estate of Paul Knofflock, dec'd.*

No. 513 PINE ST.—Genteel three-story brick dwelling, with back building, lot 18 by 72 feet. Subject to \$72 ground rent per annum.

No. 1825 RIDGE AV.—New three-story brick store and dwelling, with back buildings, lot 18 by 109 feet, to Chauncey street. Has the modern conveniences. Immediate possession.

No. 710 CULLEN ST.—Two-story brick house, 7th Ward, lot 14 by 36 feet. *Orphans' Court Sale, Estate of Cyrus Black, dec'd, and Josephine Addison, minor.*

No. 820 N. TWENTIETH ST.—Modern Three-story brick dwelling, with back buildings, lot 16 by 70 feet. \$2,800 may remain.

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KING & BAIRD,
607 Sansom St.

fixed its icy seal upon him they left him stark and lifeless under the cold sky, and went their way to their homes and their promenades without even informing the police officers of the terrible tragedy which had been enacted, or that a lifeless human body was lying exposed upon the public highway.

These men continued to conceal their knowledge of the felony of murder, which you had committed, and were thus in some sense abettors after the fact of the crime which you committed, until they were brought forward in this court to give testimony at the trial in which you were convicted.

I beg leave to commend the attention of the District Attorney, the officer of the Commonwealth, to the case of these men; to consider whether or not they have been guilty of misprision or concealment of felony, and if so, to suggest to him the propriety of sending in bills of indictment against them.

During the long period of imprisonment to which it is our duty to sentence you, you will have ample opportunity to think upon and, we trust, to repent of the crimes which you have committed. You go into prison a very young man; you will come out of it in the middle of life; so use your time and privileges that you may daily grow in grace of heart, and in the culture of your understanding, that at the end of your term, redeemed from the habits of an evil life, you may be restored to your family and to society, and thereafter live a useful and honorable life.

The sentence of the court is, that for the felony of murder of the second degree, of which you have been convicted, you undergo imprisonment, by separate or solitary confinement, in the State Penitentiary for the Eastern District of Pennsylvania, for the period of eleven years, eleven months, and ten days.

And for the felony of robbery of which you have been convicted, the sentence of the court is, that you pay a fine of one cent and that you undergo imprisonment by separate or solitary confinement in the said Eastern Penitentiary, for the further period of five years from and after the expiration of your sentence above stated on bill No. 148, of October session, 1869, for the felony of murder of the second degree, of which you have been convicted.

EIGHTH JUDICIAL DISTRICT. Orphans' Court.

ESTATE OF HERMAN KLINE, dec'd.

1. Where a decedent dies seized of real estate with a mansion house thereon, and leaves only a widow and collateral heirs, and the widow petitions for an inquest to make partition of the estate between herself and the collateral heirs, the inquest must include the mansion house in their valuation.
2. The widow in such case is entitled to the mansion house for life, but the value of it must be included, whether the estate is or is not susceptible of partition, she is only entitled to one-half the estate in value not in quantity.

Sur exceptions to award of inquest to make partition.

Opinion by JORDAN, P. J.

Herman Kline died intestate, leaving a widow, but no lineal descendants. He left brothers of the whole blood, and children of a deceased sister. His real estate consisted of a tract of land, containing sixty-five acres, whereon the mansion house and other buildings are erected. His widow presented a petition to the Orphans' Court of Northumberland county, praying the court to award an inquest to make parti-

tion of her husband's estate among her and his collateral heirs. An inquest was awarded, who made return, that the real estate of the decedent could be equally parted and divided between the widow and collateral heirs of the decedent, into two equal parts, having regard to the true value thereof, and that they therefore parted and divided the same, awarding to the widow purpart No. 1, particularly designated by metes and bounds, containing thirty-two acres one hundred and seventeen perches strict measure, which they valued at \$1636.36. That the mansion is situated on this purpart, but that they did not put any valuation on it, and the buildings appurtenant. Purpart No. 2, containing twenty-four acres and one hundred and seventeen perches, they valued at the same sum. Exceptions were filed to the inquisition by the collateral heirs.

1. Because more than one-half part in amount and value was assigned to the widow.
2. Because the inquest did not make partition among the heirs of intestate, and did not state whether the part left for them could be parted among them or not.
3. Because the inquest did not state whether or not the land could be divided into more than two purparts.
4. Because the inquest did not find whether the premises could be divided among the heirs or not.
5. Because the inquest allotted and assigned to the widow a portion of the land for life, without assigning to each of the heirs a portion in severalty, and without finding whether such a partition among the widow and all the said heirs could be made without prejudice to or spoiling the whole.
6. Because the value of the two purparts is grossly unjust and unequal.

I am not aware of any decision of our Supreme Court, on the main objection made to the proceedings, to wit, in not valuing the mansion house.

Where an intestate leaves a widow and issue, she is entitled to one-third part of the real estate during her natural life. Where he leaves a widow, and no issue, but collateral heirs, she is entitled to one-half of the real estate (including the mansion house) during the term of her natural life. Was it the intention of the Legislature in the latter case, to give the widow one-half of the estate in quantity, or in value? Why did the Legislature allow her one-third where there was issue, without including the mansion house, and direct that where there was no issue, she should have half the real estate including the mansion house? Under our intestate laws, the widow where there is issue may apply for an inquest, but she cannot take at the valuation. If the estate can be divided, so as to accommodate all the children and heirs, it must be divided, and a valuation put on each purpart; out of the whole valuation money, the widow is entitled to interest on the third part, during life. If the estate cannot be divided, so as to accommodate all the heirs, the inquest must determine how many it will accommodate, and value each purpart. In the one case (where there is issue) the widow receives interest during life in money, in the other case, where there is a failure of issue, she is to have half in land, not in quantity, but in value. If it were not so, the widow, having the right to the mansion house, might enjoy during her life much more in value, than half the estate. The mansion house might be worth \$5,000. The one hundred acres of land upon which it is

situated worth \$50 an acre, making its value \$5,000. If she is entitled to half the land, without taking into consideration the value of the mansion house she would receive \$7,500, and the collateral heirs \$2,500. If this can be done, it seems to me the object of the Legislature would be defeated. Suppose however the one hundred acres of land, without the mansion house, is worth but \$2,500. How is partition to be made? She is entitled to the mansion house during life. Must she pay to the collateral heirs the difference in valuation to equalize the shares into which it may be divided? The act makes no provision for a case of that kind. Partition in such a case could not be made, so as to give the widow one-half the value of the estate, and the collateral heirs the other half. If the estate was appraised, she would receive interest on the one-half the valuation, during life. By valuing the mansion house and the land, and giving her the benefit of one-half their value, she receives all that the Legislature intended she should have of her husband's real estate. If half the land, or its value, without taking into consideration the value of the mansion house, is given to her, the collateral heirs do not receive one-half the estate of the decedent. By the common law, the widow was endowable of one-third part of such estates of inheritance, whereof the husband was seized at the time of the marriage, and none other. This was extended by the statute of 9 Henry III., chap. 7, to all such lands as the husband was seized, at any time during coverture. If the lands and tenements were susceptible of division, a third part was to be allotted to the widow, by metes and bounds; if they could not be divided, she was still to be endowed in a special and certain manner, as if a mill, she shall have the third toll disk, or the whole mill, every third month, so she shall have the third part of the profits of a fair or office. She was entitled to be endowed, according to the value of the lands, at the time her husband's interest thereon ceased. In Pennsylvania, a widow where there is issue is entitled as at common law, to be endowed of one-third part in value. In some other of the States it is different.

McCutt's Estate, 6 P. F. Smith, 363, does not present the question raised in the case under consideration. There the estate could not be divided without prejudice. The widow filed exceptions. 1st. That there being a widow and collateral heirs, the land should have been divided, giving to her the one equal half part thereof, including the mansion house, &c. 2d. There being a mansion house, &c., they should have been set apart, with one-half part of the real estate, to the widow. The exceptions were dismissed, and the Supreme Court said, it was only in case of actual partition of the land, the mansion house should be given to the widow. In that case the whole estate was valued at \$984, and was awarded to one of the collateral heirs, at her bid \$10 above the valuation. In distributing this sum, the widow would be entitled to only the interest on one-half the clear valuation money during life. The mansion house was included in the \$980, at which the whole was valued.

It is unnecessary to give an opinion on any exception but the first one, which was intended to raise the question, whether the mansion house must not be valued where the estate is susceptible of partition, and a purpart is assigned to the widow. I am of opinion the exception is a fatal one, and therefore set aside the inquest.

[For the Legal Gazette.]

The trial of DR. PAUL SCHOEPE, in the Court of Oyer and Terminer of Cumberland county, Pa., charged with the murder of Miss Maria M. Stennecke by poison. May 24th, 1869.

MESSRS. EDITORS.—So much has already been written upon this case in the different journals of the day, that it might seem almost a work of supererogation to intrude it upon your columns, which, happily keeping aloof from mere sensational writing, are accustomed to discuss subjects of this nature with the rigid calmness of critical investigation. Few criminal trials have excited greater interest in this community, indeed we may say throughout the country, than the one before us. This interest has become intensified since the rendering of the verdict of *Guilty*, and it has culminated since we have been apprised of the unexpected refusal of the Governor to reverse the sentence of the court by granting the executive pardon.

The two sister professions of Law and Medicine are deeply concerned in the issue of this case, which involves consequences equally interesting to both.

We propose, as briefly as may be, to review some of the more prominent features of this trial, premising, at the outset, that the defendant is utterly unknown to us, and that neither directly or indirectly have we any sort of interest in the case except what pertains to abstract truth and justice, and the defence of science.

The first point that we shall assume, as a legitimate deduction from the trial, is the *total failure of the chemical and medical evidence to establish the fact of poisoning*. In order to prove this allegation the prosecution endeavored to show (1) that the accused had purchased poison (prussic acid) in one or more places some days before Miss Stennecke's death; (2) that this poison was discovered in the stomach after death; and (3) that the post-mortem appearances justified such a belief. In reference to the *first point*—the alleged purchase of prussic acid—nothing can be made out of it. Dr. S. was in the habit (as are most country physicians) of dispensing his own medicines; and as prussic acid is a substance that is peculiarly liable to spoil, from decomposition on exposure, and is, consequently, often worthless as found in the shops, we see nothing remarkable in a physician making his own purchase of this article! Yet this simple circumstance of his having previously purchased poison seems to have stirred up a tremendous prejudice against the prisoner, as well in the court, as in the community around.

But *secondly* a distinguished professor of Baltimore swore that he had discovered "faint traces" of this poison in the stomach of the deceased; and another physician, Dr. Conrad, declared that the post-mortem appearances were such as would result from prussic acid poisoning, although he admits that he had no personal experience in the matter, but had derived all his knowledge from "reading two books." Now, as regards Professor Aiken's experiments with the stomach, it was conclusively shown by the rebutting testimony, (and it has, since the trial, been reiterated over and over by chemical experts, the first in the land,) that his mode of testing was radically faulty in two respects: first, in omitting to use the most delicate of all the tests—nitrate of silver, and, secondly, by his really manufacturing "the faint traces" of prussic acid, by his use of a strong acid in his process of distillation. There is a substance termed *sulpho-cyanide of potassium*, normally present in human saliva; this substance getting into the stomach would, under the influence of the acid employed in the distillation, give rise to the very poison in question.

Besides, it is a well established principle in medical jurisprudence that the discovery, after death, of merely "faint traces" of a poison is of no significance whatever, unless the symptoms before death could be fairly, if not exclusively, attributed to the poison in question. This proviso we conceive to be eminently proper, inasmuch as "traces" of certain poisons may inadvertently be introduced into an analysis by the different reagents employed, unless the most scrupu-